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# ONTARIO LABOUR RELATIONS BOARD REPORTS

September/October 1997





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# ONTARIO LABOUR RELATIONS BOARD REPORTS

A Bimonthly Series of Decisions from the  
Ontario Labour Relations Board

Cited [1997] OLRB REP. SEPTEMBER/OCTOBER

EDITOR: RON LEBI

Selected decisions of particular reference value are  
also reported in *Canadian Labour Relations Boards  
Reports*, Butterworth & Co., Toronto.



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**Construction Industry - Final Offer Vote - Reference - Minister of Labour** referring question of certain individuals' eligibility to vote in final offer vote directed by Minister in respect of employers operating in road building sector of the construction industry - Union submitting that eligible voters should include union members who had worked in road building sector in recent past and who would be eligible to vote according to union's internal rules set out in union constitution and by-laws - Board advising Minister that, even in the construction industry, only employees of the employer are entitled to vote, and union members who were not employees in the bargaining units are not eligible to vote

**BEFORE:** *Robert Herman*, Alternate Chair

**APPEARANCES:** *Stephen Wahl* and *J. Cordeiro* for Labourers International Union of North America, Local 183; *Stephen Wahl* and *M. Galligher* for International Union of Operating Engineers, Local 793; *Walter Thornton* and *Tony Capobianco* for Associated Paving Ltd., Capobianco Management Limited, Associated Contracting Inc., Rosalucia Landscaping Inc., The Core Group Inc. and Capo Contracting Inc.; *Harry Freedman*, *Kari Abrams* and *Carl Woodman* for The Metropolitan Toronto Road Builders' Association, Intervenor.

**DECISION OF THE BOARD;** October 17, 1997



### Background

1. There are a number of applications currently pending before the Board involving various disputes between the applicants, Labourers International Union of North America, Local 183 ("Local 183" or "Labourers"), and the International Union of Operating Engineers, Local 793 ("Local 793" or the "Operating Engineers"), and the employer, Associated Paving Ltd., Capobianco Management Limited, Associated Contracting Inc., Rosalucia Landscaping Inc., The Core Group Inc. and Capo Contracting Inc., collectively referred to as "Associated" or "the employer". The Board will refer to these responding parties in the singular both for ease of exposition, and because these parties have previously been found to constitute a single employer within the meaning of section 1(4) of the Act.

2. The outstanding applications include an unfair labour practice complaint, two applications that the Board direct a first collective agreement, a Reference from the Minister, and four applications pursuant to section 133 of the Act. The instant decision deals only with one issue that arises in the Reference from the Minister (Board File No. 2290-96-M).

3. While it is unnecessary to set out a detailed history of the complex and lengthy interactions between the parties in order to understand the issue dealt with herein, a brief summary will be helpful. Applications for certification were filed by each of the applicant unions on November 5, 1992. The Operating Engineers took the position (still maintained) that it already had a collective agreement with at least some of the responding parties, through voluntary recognition, but it filed its application for certification in the alternative, given the responding parties' denial of its claim. After many days of hearing, the Board (differently constituted) issued a decision on May 13, 1996, by which certificates were issued to the applicants, granting each of them bargaining rights for both the ICI ("industrial, commercial and institutional") and all other sectors of the construction industry. The Board also issued declarations pursuant to section 1(4) of the Act, referred to above, by which all the responding parties named herein were found to constitute a single employer for purposes of the Act. The net effect of that Board decision was that the applicants were certified, for all sectors, for all of the responding parties. By operation of law, the parties became immediately bound to the respective ICI province-wide agreements, but for all other sectors, agreements were to be bargained. As Associated operates primarily in the road building sector, it was to that sector that the parties turned their attention.

4. On June 19, 1996, the Operating Engineers and the Labourers each served notice to bargain, for sectors other than the ICI, upon the employer, without prejudice to the position of the Operating Engineers that it already had an existing collective agreement with Associated. Bargaining began, and the parties went to conciliation on October 8, 1996. Conciliation proved unsuccessful. The next day, October 9, 1996, the employer wrote to the Minister of Labour, asking that the Minister direct a final offer vote, pursuant to the provisions of section 42 of the Act.

5. In its request of the Minister counsel for Associated wrote, in part, as follows:

The employees in the affected bargaining unit work in the construction industry. However, unlike many construction industry employers, we are dealing with relatively steady, long-term employment. Our client's construction business is seasonal in nature, and it is anticipated that the vast majority, if not all of the employees in the affected bargaining unit will be laid off in November or December, 1996 and recalled in the Spring in 1997. Accordingly, all of the affected employees can be easily located and there are no practical difficulties in relation to conducting a vote among these employees in the foreseeable future. Accordingly, it is respectfully submitted that there are no factors in relation to this request that would make it inappropriate to direct a vote pursuant to section 42 of the LRA.

6. Section 42 of the Act reads as follows:

42. (1) Before or after the commencement of a strike or lock-out, the employer of the employees in the affected bargaining unit may request that a vote of the employees be taken as to the acceptance or rejection of the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties and the Minister shall, and in the construction industry the Minister may, on the terms that he or she considers necessary direct that a vote of the employees to accept or reject the offer be held and thereafter no further such request shall be made.

(2) A request for the taking of a vote, or the holding of a vote, under subsection (1) does not abridge or extend any time limits or periods provided for in this Act.

7. On October 15, 1996, the applicants wrote to the Minister, requesting of her an opportunity to make submissions with respect to the request for a direction for a final offer vote, raising the issue that any vote would be held within the context of the construction industry. The same day, the Ministry, on behalf of the Minister, responded and directed that the applicants make their submissions by October 21, 1996. Those submissions were filed by that date.

8. The Minister did direct that there be a final offer vote pursuant to section 42 by way of letter dated October 23, 1996. Prior to the vote being held, the applicant unions took the position that those eligible to vote included all members of the respective unions working in the road building sector in Board Area #8, and not only individuals actually employed by Associated. The applicants caused notice of the vote to be sent to their members who had been working for contractors working in the road building sector, and with respect to whom benefits or remittances had been received during the peak road building season, August or September, 1996.

9. The actual vote was held on October 29, 1996, and 74 persons cast ballots, of which 66 were segregated and not counted, subject to challenge by one of the parties. It is not disputed that at least a significant number of the 66 segregated ballots were cast by individuals who were not employees of Associated at the time, but were members of one of the applicant unions and were then working for contractors other than Associated in the road building sector, or had been doing so in the recent past.

10. By letter dated October 31, 1996, the applicant unions wrote to the Minister, objecting to the vote, on the basis that proper notice had not been provided to all those eligible to vote, raising the issue of the eligibility to vote of members of each union, and asking that the question of the eligibility to vote be referred by the Minister to the Board pursuant to section 115(1) of the Act. By letter of the same date, the employer requested that the Minister not direct that the segregated ballots be counted, and made submissions as to why the only persons entitled to vote were the employees in the bargaining unit of the employer, and not members of either union who did not fall within this category. The employer requested that the Minister accept the Reports of the Returning Officer.

11. In response, by letter dated November 1, 1996, counsel for the applicants made submissions with respect to the eligibility of members to vote, and again asked that the matter be referred to the Board by Reference from the Minister, or alternatively, that the Minister herself convene a hearing to hear the evidence and submissions of the parties with respect to the issues raised.

12. On November 4, 1996, the Minister referred to the Board, for its advice, this question:

Were the individuals who cast ballots which were segregated and not counted in the two last-offer votes on October 29, 1996 employees eligible to vote within the meaning of section 42 of the *Labour Relations Act, 1995*?

13. In turn, the question raises two issues. First, what can be described as the “generic” voter eligibility issue, whether members of the unions, who were not at the relevant time also employees in the bargaining unit of any of the responding companies, were eligible to vote in the final offer votes that were held. This decision considers that question. The instant decision does not deal with the second

issue; specific challenges that are or have been raised on an individual basis, challenging the entitlement to vote of a particular individual, and the resolution of any such challenges.

14. At the commencement of the hearing, the Metropolitan Toronto Road Builders' Association ("MTRBA") sought to intervene in the proceeding, in order to participate in the issue dealt with herein. This request was opposed by the employer. The employer also took the position that the unions were precluded from raising the issue of whether members not in the bargaining unit were entitled to vote, in light of their alleged failure to have raised it earlier.

15. At the hearing, the Board gave the following oral decision:

- (1) The question for the Board is whether the unions and/or the Metropolitan Toronto Road Builders' Association can make submissions on the issue that the Board is now dealing with, the question of the appropriate voting constituency, and who is eligible to vote.
- (2) It is important to note that this matter comes to the Board by way of a Ministerial Reference, following a vote directed by the Minister pursuant to section 42 of the Act. The significance of this factor is at least two-fold. First, as counsels' submissions have noted, the role of the Board is somewhat different in a Reference from the Minister than it is in other types of proceedings. A matter has been referred to the Board, and it is required to give an answer in respect of that matter to the Minister. The Board is required to give its best advice to the Minister. In this context, there is less of a pre-determined pattern or structure as to how the Board goes about reaching its answer, in order to properly respond to the Minister.
- (3) Second, the mechanics of structuring any vote which has been directed in this context (for example, with respect to matters such as notice, voting constituency, eligibility to vote, voting arrangements), is similarly less pre-determined, and there is no defined mechanism for dealing with these issues.
- (4) Given these factors, the approach taken by the Board in other contexts in imposing or enforcing deadlines for participation of the parties may not be as justified or as appropriate here.
- (5) Turning to the conduct of the parties, and dealing first with the MTRBA, it acted expeditiously; however, the Minister chose not to accept its participation, as was her prerogative. It cannot be said, however, that the MTRBA delayed in any way. It is therefore entitled to participate, and to address the issues that are before the Board, since those issues so clearly can affect it.
- (6) With respect to the two unions, the situation is less clear. I am not satisfied that the submissions of October 21, 1996 clearly raised the issues that the Board is now dealing with, but even so, I am satisfied that the unions should be allowed to participate in this issue.
- (7) There are several reasons for this. First, the Minister's letter of October 15, 1996 was not clear, insofar as the procedure to be followed by the unions was concerned, in that paragraph 2 of that letter indicated that an Officer of the Board would first consult with the parties and attempt to work out arrangements for the vote, yet on page 2 of that same letter, it was indicated that the Ministry was "currently" in the consultations stage. In any event, in response to this letter, the unions did make submissions on the discretion of the Minister to order the vote.
- (8) Despite this letter and the indication that an Officer from the Board would be consulting with the parties and attempting to work out the voting arrangements, it is not clear that any such consultation took place.
- (9) Second, after the vote was directed, but before it was held it does appear as if the unions did raise their concern, although it is not apparent that they did so by way of letter. It



appears that they raised it because it is not disputed that the Board Officer conducting the votes had sufficient ballots with him, to enable the many people who showed up, who were not employees of the employer, to vote. This strongly suggests that the issue of members who were not employees voting had been raised with the Officer prior to the vote. Otherwise, it is difficult to see why the Officer would have had with him a significantly larger number of ballots than would otherwise have been needed.

- (10) Third, the union's concern with respect to voter eligibility was raised in written form by way of letter dated October 31, 1996.
- (11) While the unions could perhaps have made their position clearer at an earlier stage of the process, I note again that final offer votes directed by a Minister are not a regulated process, and the ground rules or mechanisms for raising and dealing with matters are often not clear or pre-set. In balance, I am not satisfied that the unions acted in a manner that should now preclude them from participation in the issue before the Board.
- (12) Lastly, this is a Reference from the Minister, dealing with what appears to be a novel issue and an issue of some importance to the industry. I am therefore of the opinion that it will be of assistance to the Board to have the participation of the unions.
- (13) In summary, the parties present can all participate in this issue.

### The Facts

16. The parties agreed to certain facts, in addition to those set out earlier, solely for purposes of litigating the generic voter eligibility issue, without prejudice to any position they might later take with respect to this issue and with respect to any other application or proceeding, including the unfair labour practice complaint.

17. Where the facts were not agreed, each party stipulated the facts upon which they wished to rely, again without prejudice to any of the other issues in these applications, should they proceed further. None of these stipulated, but not agreed, facts were relied upon in the decision that follows, and it is therefore unnecessary to resolve these factual disputes. No *viva voce* evidence was led.

18. The MTRBA is an employers' association that has represented employers in the road building industry in the greater Metropolitan Toronto area for 35 years, negotiating pattern collective agreements in the road building sector of the construction industry. The "roads sector" is one of the recognized sectors, so defined in section 126 of the Act. The MTRBA represents a membership of 20 contractors in collective bargaining and has concluded a series of collective agreements with the Operating Engineers, Local 793, Teamsters Local 230 and Labourers' Local 183 over the past 35 years. In addition, well over 125 employers were bound by "pick-up" MTRBA pattern collective agreements with Local 793 and Local 183. In 1996, the total number of employees who have been covered by these collective agreements during the 1996 road building construction season is greater than 180 operating engineers and greater than 450 construction labourers.

19. Employment in the road building sector of the construction industry is seasonal, such that employers customarily employ large numbers of operating engineers and construction labourers during the summer months, when the majority of road building construction is performed, while seasonal lay-offs occur in October and November of each year at the time of the seasonal closing of road building operations.

### The Decision

20. The final offer vote directed by the Minister here may be the first occasion where such a vote has been directed in the construction industry. While such votes have regularly been directed in

non-construction contexts, the Board is not aware of any, nor was it referred to any, prior instance of such a direction or vote in construction.

21. In both construction and non-construction, the direction of a final offer vote carries with it implications for the parties, but there are factors at play in the construction industry which are not applicable elsewhere. The provisions of section 44(1) of the Act, which state that a collective agreement has no effect unless ratified, do not apply to employees in the construction industry. Thus, the practical reality for non-construction industry contexts - that unions must hold a ratification vote - does not apply in construction. It remains the decision of the union in construction whether to hold a vote on an employer offer or tentative agreement, and a collective agreement can be binding without such a vote. A decision by the Minister to direct a final offer vote for a construction industry agreement can therefore have the effect of requiring a vote where none might otherwise have been held.

22. As well, if the voting constituency in the final offer vote should be different than it would be in a ratification vote, there is the potential for idiosyncratic collective agreements to result. When a broad group of union members and/or employees working in a sector vote whether to ratify a collective agreement (the customary voting constituency utilized by construction unions in conducting ratification votes), pattern or consistent collective agreements are more likely. If only employees working for an individual employer vote on ratification, there is a much greater likelihood that employers working as unionized competitors in the geographical area will operate under meaningfully different collective agreement wage rates and other conditions, potentially destabilizing the industry in that sector. This concern is best evidenced by the position of the MTRBA, an employers' organization representing employers working in this sector, which has intervened in order to support the position of the unions, not the employer.

23. This decision will consider the question of the appropriate voting constituency in a final offer vote taken in a sector of the construction industry. In the vote directed here by the Minister, there was no determination by the Board, or the Minister as far as the Board is aware, as to the eligibility of the voters who attended and cast ballots.

24. Associated submits that only employees in the bargaining unit were entitled to vote. The unions and the MTRBA take the position that those individuals were entitled to vote, but so also were members of the relevant union who had worked in the road building sector in the recent past, and who would be eligible to vote according to the respective union's internal rules for eligibility, as reflected, for example, in the union constitution or by-laws.

25. It is useful to set out the provisions of sections 41 and 42 together, since comparison between the two is of some assistance. Those sections read as follows:

41. Where, at any time after the commencement of a strike or lock-out, the Minister is of the opinion that it is in the public interest that the employees in the affected bargaining unit be given the opportunity to accept or reject the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties, the Minister may, on such terms as he or she considers necessary, direct that a vote of the employees in the bargaining unit to accept or reject the offer be held forthwith.

42. (1) Before or after the commencement of a strike or lock-out, the employer of the employees in the affected bargaining unit may request that a vote of the employees be taken as to the acceptance or rejection of the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties and the Minister shall, and in the construction industry the Minister may, on the terms that he or she considers necessary direct that a vote of the employees to accept or reject the offer be held and thereafter no further such request shall be made.

(2) A request for the taking of a vote, or the holding of a vote, under subsection (1) does not abridge or extend any time limits or periods provided for in this Act.

26. As a general proposition, the *Labour Relations Act, 1995* does not regulate the conduct of votes of an internal union nature, but it does speak to the question of voter eligibility. Where a strike or ratification vote is held, the process by which such a vote is to be conducted may be left largely to the union, but there are specified limitations upon this discretion. For example, subsections 79(7), (8), and (9) of the Act read as follows:

79. (7) A strike vote or a vote to ratify a proposed collective agreement or memorandum of settlement taken by a trade union shall be by ballots cast in such a manner that persons expressing their choice cannot be identified with the choice expressed.

(8) All employees in a bargaining unit, whether or not the employees are members of the trade union or of any constituent union of a council of trade unions, shall be entitled to participate in a strike vote or a vote to ratify a proposed collective agreement or memorandum of settlement.

(9) Any vote mentioned in subsection (7) shall be conducted in such a manner that those entitled to vote have ample opportunity to cast their ballots. If the vote taken is otherwise than by mail, the time and place for voting must be reasonably convenient.

27. As well, section 165 of the Act reads as follows:

165.(1) Where an employee bargaining agency or an affiliated bargaining agent conducts a strike vote relating to a provincial bargaining unit or a vote to ratify a proposed provincial agreement, the only persons entitled to cast ballots in the vote shall be,

- (a) employees in the provincial bargaining unit on the date the vote is conducted; and
- (b) persons who are members of the affiliated bargaining agent or employee bargaining agency and who are not employed in any employment,
  - (i) on the day the vote is conducted, if the vote is conducted at a time when there is no strike or lock-out relating to the provincial bargaining unit, or
  - (ii) on the day before the commencement of the strike or lock-out, if the vote is conducted during a strike or lock-out relating to the provincial bargaining unit.

• • •

(3) In a vote to ratify a proposed provincial agreement, no ballots shall be counted until the voting is completed throughout the province.

• • •

(5) Where a complaint is made to the Minister that subsection (1), (2) or (3) has been contravened and that the result of a vote has been affected materially thereby, the Minister may, in the Minister's discretion, refer the matter to the Board.

• • •

(8) Where, upon a matter being referred to the Board, the Board is satisfied that subsection (1), (2) or (3) has been contravened and that such contravention has affected materially the results of a vote, the Board may so declare and it may direct what action, if any, a person, employer, employers' organization, affiliated bargaining agent, employee bargaining agency or employer bargaining agency shall do or refrain from doing with respect to the vote and the provincial agreement or any



related matter and such declaration or direction shall have effect from and after the day the declaration or direction is made.

28. Of course, a vote directed by the Minister is not a strike or ratification vote. A vote directed pursuant to section 42 is held because of a direction from the Minister, made upon request from an employer, and the union's consent is unnecessary, and indeed, would be inconsistent with the policy reflected in the section (see for example *Wilf McIntyre*, [1990] OLRB Rep. Oct. 1052 and *Canada Cement Lafarge Limited*, [1980] OLRB Rep. Nov. 1583). And the consequences of a final offer vote may be different than the result of a ratification vote (see, again, *Canada Cement Lafarge Limited*, above). Ought a section 42 vote in the construction industry be conducted in a manner analogous to internal union votes that are not to strike or ratify, where voter eligibility is left up to the union, or in a manner analogous to strike or ratification votes, where the union determines eligibility, subject to sections 79 or 165, as the case may be, or should eligibility be determined on some other basis?

29. The unions and the MTRBA argue that voter eligibility should be determined solely by the unions, based upon their own criteria as set out in their constitutions or by-laws. We have some difficulty with this proposition, since a vote under section 42 flows from an employer request to the Minister, and the Minister's direction to hold the vote. Unions will often (if not always) be opposed to such votes. If it were otherwise, the employer would not have resorted to the section 42 mechanism in order to get a vote on its offer. In a context where a vote is being imposed on a union by Ministerial direction, it seems somewhat counter-intuitive to allow the union sole discretion, unfettered and non-reviewable, to determine who votes. To adopt such an approach would allow potential manipulation of the vote to which the union is opposed, and would ignore the interests of the Minister as reflected in section 42, and in the Board's view, ignore the words of section 42.

30. That section reads, in part, that the Minister "may, on the terms that he or she considers necessary direct that a vote of the employees to accept or reject the offer be held". The Minister is given the authority both to direct that a vote be held and to dictate the terms under which the direction is made. It would appear, therefore, that the Minister is given the discretion to determine voter eligibility in these votes. She has asked this Board for advice in this respect through the mechanism of this Reference.

31. The vote taken here was with respect to a final offer made by an employer working in the construction industry, primarily in the road building sector. In *Elgin Construction*, [1995] OLRB Rep. June 783, the Board commented on voter eligibility issues in the construction industry:

28. The provisions of section 73.1 speak generally to employment relationships, and the rights contained therein are granted with respect to "employees in the bargaining units", and of course, to the union that represents them. In the construction industry, an equally important and meaningful relationship is that between "member" and his/her craft union. This relationship is critical whether or not the member is working at the time, for it is the union which monitors and assigns work, for the most part, through its hiring hall.

29. To limit legal rights in the construction industry with being an "employee" in a "bargaining unit" at any one point in time is somewhat inconsistent with how the industry operates. For example, the definition of "employer" for construction industry purposes (cf. section 119) does not require that there be actual employees at the time of assessing "employer" status. Similarly, an agreement in writing between an employer and a union can be a valid collective agreement in the construction industry, notwithstanding there were no employees in the bargaining unit or units affected at the time the agreement was entered into (cf. section 123). And construction industry certifications regularly certify unions for bargaining units which contain no employees at the time of certification (section 146, and see, for example, *Colonist Homes*, [1980] OLRB Rep. Dec. 1729.)

30. Because of the nature of the hiring hall, and the nature of construction industry work, members may often work for individual employers for relatively short periods of time, and routinely work

for a variety of employers during the year or during their careers. Members who are not at the time working for a particular employer may still have a direct and meaningful interest in the labour relations of that employer. This fact was a primary reason for restructuring the construction provisions of the Act in 1977, to require or facilitate single trade multi-employer bargaining. And it is why, in large part, unions and employers insist on similar, if not identical, terms and conditions for all employers working within the same sector and locale. If it were otherwise, construction industry labour relations would return to the previous regime of self help, confrontation, and warfare.

31. Reflecting the reality that all members of the trade in a sector represented by the same local have common interests, regardless of employer, construction trade unions holding strike votes have generally conducted one strike vote, with all members who work in the sector entitled to vote. This practice has generally been followed regardless of the nature of the employer organization, whether it has been designated (for purposes of the I.C.I. sector), accredited, or as in the instant case, remains a non-accredited and therefore voluntary group of employers. In all these circumstances, the construction trades have generally conducted strike votes among all members who would ordinarily work in the sector voting, on the realistic basis that all of those members are directly affected by the collective agreement or agreements in question, and by the conduct of all employers working in the sector. And that is what Local 1059 did here.

32. Votes held on an individual employer basis may have potentially significant negative consequences for the industry. It may become more difficult for both unions and employers to bargain and enforce a unified approach within a particular geographical area. Individual companies may well have incentives to bargain on their own, since strike votes taken to bar replacement workers would then only be taken amongst their own employees. This in turn may pit members working for one company against members working for other companies.

32. In that case, notwithstanding the concerns expressed in the quote above, the Board concluded that a strike vote taken pursuant to the provisions of section 73.1 (under Bill 40, since repealed) was to be taken only amongst the “employees” in the bargaining unit, and non-employee members of the union who had worked or were working for other contractors in the same sector were not eligible to vote. Although that decision is relied upon here by Associated, the Board based its conclusion upon the specific wording of section 73.1 of the Act. That decision is of limited support, therefore, for the proposition asserted here, that only employees in the bargaining unit are eligible to vote in a final offer vote directed by the Minister under section 42 of the Act.

33. That decision is of assistance, however, insofar as it reflects that the decision on voter eligibility, here as there, must be based upon the wording of the relevant statutory provisions, read and interpreted in the context of the entire Act, and in particular the construction industry provisions. And here as there, the particular statutory provisions lead the Board to the conclusion that it is only employees in the bargaining unit who are eligible to vote in a final offer vote directed by the Minister pursuant to section 42.

34. It is helpful to trace the legislative history of both sections 41 and 42 in explaining this conclusion. The predecessor of section 41 was introduced into the Act, as section 34(d), in July 1975, by virtue of 1975 S.O. Chapter 76:

34d. Where, at any time after the commencement of a strike or lock-out, the Minister is of the opinion that it is in the public interest that *the employees in the affected bargaining unit* be given the opportunity to accept or reject the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties, the Minister may, on such terms as he considers necessary, direct that a vote of the employees in the bargaining unit to accept or reject the offer be held forthwith.

[emphasis added]

35. When the Minister was of the opinion that it was in the public interest that “the employees in the affected bargaining unit” be given the opportunity, he or she could direct that there be a vote of the “employees in the bargaining unit”. This section was added to the general part of the Act, and did not fall within the construction industry provisions, nor did the section make any explicit reference to votes held in the construction industry. A vote could be directed when it was in the public interest that “employees in the *affected* bargaining unit” be afforded a vote, suggesting that the focus of the vote be only those employees in the affected bargaining unit.

36. When this amendment was introduced, the only provisions in the Act dealing with the conduct of votes were what are now subsections 79(7) and (9). There was then no equivalent to the current subsection 79(8), the subsection that addresses who is entitled to vote.

37. The next relevant amendment was passed in 1980 (S.O. 1980 c. 34) when what is now section 42, the section in question, was introduced into the Act as section 34e. That new section read as follows:

34e. - (1) Before or after the commencement of a strike or lock-out, *the employer of the employees in the affected bargaining unit may request that a vote of such employees be taken* as to the acceptance or rejection of the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties and the Minister shall, and in the construction industry the Minister may, on such terms as he considers necessary direct that a vote of such employees to accept or reject the offer be held and thereafter no further such request shall be made.

(2) A request for the taking of a vote, or the holding of a vote, under subsection 1 does not abridge or extend any time limits or periods provided for in this Act.

[emphasis added]

38. Also introduced at the same time, as section 63(4a), was what is now section 79(8) of the Act:

All employees in a bargaining unit, whether or not such employees are members of the trade union or of any constituent union of a council of trade unions, shall be entitled to participate in a strike vote or a vote to ratify a proposed collective agreement.

39. This latter 1980 amendment represented the first legislative intrusion into voter eligibility issues in internal union votes. Under section 34e (now 42), an employer could request that a vote be taken as to the acceptance or rejection of an offer made by the employer to the union, and if this request arose in the construction industry, the Minister was given a discretion to direct such a vote, on terms as the Minister considered necessary. No reference was made to the public interest, as it was with section 34d, passed five years earlier. It was the employer of “employees in the affected bargaining unit” who could make the request, and if the Minister so directed, there would be “a vote of *such* employees”. The reference in this section to the vote being held of “such employees” is strong evidence of the legislative intention that *only* the employees in the bargaining unit be entitled to vote.

40. The timing of this amendment also supports this argument, given that it occurred approximately four years after the Board issued its decision in *Jack P. Fogal*, [1976] OLRB Rep. Aug. 428. In that case, an application had been made pursuant to what is now section 74 of the Act (dealing with a union’s obligation not to act in a manner that is arbitrary, discriminatory, or in bad faith in its representation of employees in the bargaining unit). The Board had to consider whether members of the union who were not employees should have been allowed to participate in a ratification vote which arose in a sector where the union bargained primarily on an industry-wide basis, and was party to a master collective agreement binding upon many employers. The complaint alleged that the union had breached section 74 in two ways, by allowing such non-employees to vote, and also by refusing to



allow employees who were not members to vote. This latter aspect of the dispute was resolved when a second ratification vote was held, after the complaint was filed but before the hearing into it began, at which both non-member employees and non-employee members were allowed to vote. The only issue for the Board, therefore, was whether the union's decision to allow members who were not employees to vote breached section 74. The Board concluded that the section had not been breached, and in so finding wrote that "in this type of situation, where all of the respondent's members would be adversely affected should the "union scale" and other fairly standardized terms of employment be seriously undercut, there is some logic to allowing all of its members to come, and in fact, take part in the decision-making process".

41. Then, approximately four years later, the amendments were made that introduced section 63(4a) [now 79(8)] which required that all employees be entitled to vote, and section 34e, which as it then read stated that an employer may request a vote of "such employees", referring to employees in the bargaining unit.

42. A further change in the language of section 34e occurred in 1990 (R.S.O. 1990, Chapter L.2), but it was a change of only one word. The word "such" was changed to "the", so that section 34e [now 42] read as follows:

42. (1) Before or after the commencement of a strike or lock-out, the employer of the employees in the affected bargaining unit may request that a vote of *the* employees be taken as to the acceptance or rejection of the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties and the Minister shall, and in the construction industry the Minister may, on the terms that he or she considers necessary direct that a vote of the employees to accept or reject the offer be held and thereafter no further such request shall be made.

[emphasis added]

43. By this change, the reference to "a vote of *such* employees be taken" was replaced with a reference to "a vote of *the* employees be taken". The MTRBA and the unions argued that this change of the word "such" to "the" reflected an intentional decision of the Legislature to not limit the voting constituency to only the employees in the bargaining unit. This is a difficult assertion to accept. First, this change occurred through the publication of the R.S.O. 1990's compilation, and there were no materials placed before the Board, or submissions made to the Board, which would suggest that the Legislature was even aware of this change, or that it was made by amendment and not merely as part of the compilation process. It might well have been an inadvertent change, or a "housekeeping" change made by a clerk.

44. Second, and in any event, even with this change, the language used in section 42 still strongly suggests that it is only the "employees in the bargaining unit" that are to have a say when a final offer vote is directed and held, at least unless the Minister otherwise directs (the Board need not and does not here provide any advice on whether the Minister can direct that non-employee members of the union be eligible to vote pursuant to the Minister's powers "on the terms that he or she considers necessary direct that a vote of the employees ... be held"). Section 42 speaks to a "vote of the employees", and this phrase has an obvious meaning. The Board is satisfied therefore that that section speaks to a vote being held only of the employees in the bargaining unit, even when the vote arises in the construction industry.

45. The Board recognizes that this result may mean that in the construction industry the voting constituency, when the Minister directs a vote on a final offer, will be substantially different than the voting constituency that a union utilizes when it chooses to hold a ratification vote. This anomalous result flows from the language of section 42, the decision of the Minister to direct that the final offer

vote be held, and the fact that unions in this industry have generally granted voting rights to non-employee members, even when the particular employer is neither bound to an ICI agreement nor a member of an accredited employer's organization.

46. The MTRBA is not an accredited organization, and Associated remains legally entitled to bargain separately and on its own behalf. It is not required to bargain along with employer members of the MTRBA. Under the scheme of the Act, newly certified employers outside the ICI, who are not certified in an area where an employer's organization has been accredited, remain able to bargain separately and apart, and this is so despite the very significant interest of non-employee members of the trade and the employer members of the employers' organization in ensuring that a pattern collective agreement is signed. Since an employer in these circumstances is able to bargain separately and apart from other employers, and with respect to a collective agreement that will cover only its own employees, it is not inappropriate that only the employees of that employer are able to vote in a final offer vote. The opposite result would itself be somewhat anomalous: if Associated, able to bargain on its own behalf, was required to let non-employees vote on whether to accept or reject an offer applicable only to its employees.

47. The Board is therefore of the view, for the reasons expressed above, that the appropriate voting constituency for the final offer vote in question should not include members of the respective unions who were not employees in the bargaining unit at the time. The Board's advice to the Minister is that the individuals who cast ballots which were segregated and not counted are not eligible to vote in the final offer vote held pursuant to section 42.

48. As discussed, this decision does not deal with individual challenges to voters, but given the advice provided to the Minister, it is unnecessary for the Board to consider them. The only question referred to the Board dealt with the status of those whose ballots were segregated, not the status of those not subject to prior challenge and not segregated. Since the Board's advice is that the entirety of the segregated ballots ought not to be counted, individual challenges to those voters are redundant.

49. These matters are remitted to the parties for their further consideration. Any of the parties wanting any of these applications relisted for hearing shall advise the Board accordingly. If such a request is not made of the Board within a period of one year from today's date, all of these applications will be terminated.

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**3562-95-R Collingwood Nursing Home Ltd., Applicant v. Health, Office and Professional Employees, a Division of United Food and Commercial Workers International Union, Local 175, Responding Party**

**Bargaining Unit - Nursing home employer applying under Bill 7 transition provisions for order "de-combining" bargaining unit including full-time and part-time employees - Board finding substantial community of interest between full-time and part-time employees - Application dismissed**

**BEFORE:** *Christopher Albertyn*, Vice-Chair, and Board Members *J. A. Rundle* and *K. S. Brennan*.

**APPEARANCES:** *Joe Liberman*, *Susan Zober* and *Peter Zober* for the applicant; *Georgina Watts* and *Laurie Phillips* for the responding party.

**DECISION OF THE BOARD;** September 17, 1997

1. This is an application pursuant to section 5 of the *Labour Relations and Employment Law Amendment Act, 1995* for a declaration that a bargaining unit is not appropriate for collective bargaining. The applicant seeks an order that the bargaining unit, described below, which includes full-time and part-time employees, should be split into separate full-time and part-time bargaining units.

2. The application is sought on the basis that "because of the nature of the work performed, the different conditions of employment, the different skills levels of the employees, the difference in functional coherence and interdependence, that there exists no community of interest between the full-time and the part-time employees". The responding party disputes the submission, arguing that the full-time and part-time employees share a community of interest.

3. Section 5 of the said Act reads as follows:

5. (1) This section applies with respect to bargaining units that include both full-time and part-time employees on the day this section comes into force but did not include both full-time and part-time employees before January 1, 1993.

(2) The employer or the trade union that represents the employees in the bargaining unit may apply to the Ontario Labour Relations Board within 90 days after this section comes into force for a declaration that the bargaining unit is not appropriate for collective bargaining.

(3) The Board shall issue the declaration unless the Board is satisfied that the existing bargaining unit is appropriate because a community of interest exists between the full-time and the part-time employees.

(4) The following occurs upon the issuance of a declaration:

1. The bargaining unit is divided into two bargaining units, one composed of full-time employees and one composed of part-time employees.
2. Subject to subsection (6), the trade union continues to represent the employees in each of the bargaining units.
3. Subject to subsection (6), the collective agreement, if any, continues to apply to the employees in each bargaining unit. There shall be deemed to be two collective agreements, one for each bargaining unit.

(5) Subject to subsection (6), upon issuing a declaration the Board shall certify the trade union as the bargaining agent for each of the bargaining units if there is no collective agreement in force.

(6) When issuing a declaration, the Board may make such orders as it considers appropriate in the circumstances, including orders relating to the collective agreement if any.

4. The union bears the onus of establishing that the application should not be granted. (See *Marriott Corporation of Canada Ltd.*, unreported, May 1, 1997, Board File No. 3791-95-R, ¶13) [now reported at [1997] OLRB Rep. May/June 468].

5. The applicant operates a nursing home in Collingwood. It has 43 employees in the bargaining unit, of whom 17 are full-time, 20 are part-time and 6 are students performing part-time work.

6. The union was certified under Bill 40 as the bargaining agent on May 19, 1993. The bargaining unit which the Board found to be appropriate was the following:

all employees of Collingwood Nursing Home Ltd. in the Town of Collingwood, save and except Supervisors, persons above the rank of Supervisor, Registered and Graduate Nurses and office and clerical staff.



The bargaining unit covers nursing, housekeeping, kitchen and laundry employees. The employer agreed to that unit, which combined full-time and part-time employees, and the certification was issued by consent of the parties. We do not draw any adverse conclusion from the fact of the employer's agreement - we accept the employer's submission that, at that time, when combinations of bargaining units were encouraged under Bill 40, there was little likelihood of the employer successfully opposing the union's bargaining unit request on the basis that there ought to have been separate part-time and full-time units.

7. The parties concluded their first collective agreement, effective from April 21, 1993 until June 30, 1996, on March 27, 1995. The agreement was concluded shortly before the parties were due to undergo first contract arbitration and their agreement was made a consent order by the arbitrator under the *Hospital Labour Disputes Arbitration Act*.

8. The employer provides a home for approximately 60 mentally handicapped, physically challenged and chronically or terminally ill patients. Most are elderly.

9. The applicant has the following departments and employees: maintenance - consisting of one supervisor, who does not fall in the bargaining unit; laundry - one full-time supervisor who is not in the bargaining unit and a part-time laundry aide who is; housekeeping - one full-time supervisor (not in the bargaining unit) and 2 part-time aides (in the bargaining unit); the director of nursing who is not in the bargaining unit; dietary - one full-time food services supervisor (not in the bargaining unit) and two full-time cooks, a part-time breakfast cook and 5 students (all in the bargaining unit); nursing - 5 registered nurses (1 full-time, 4 part-time; all excluded from the bargaining unit), 3 full-time and 1 part-time registered practical nurses (out of the bargaining unit) and 11 full-time, 14 part-time and 2 student health care aides, all of whom are in the bargaining unit.

10. We heard a lot of evidence of precisely what work the health care aides and other employees in the bargaining unit do. We heard much of their team work and of the method by which work is organized. We learnt of the routines of the residents in the nursing home. What follows is not a detailed record of that evidence. We provide rather a synopsis of the situation, without the informative detail upon which our general observations are drawn.

11. In almost all respects the provisions of the parties' collective agreement apply in the same way to full-time and part-time employees. They work at the same rates of pay, they work interchangeably and the distinction between them has no implications for work organization. Full-timers and part-timers alike report to a charge nurse and to the Director of Care. There is no superiority of full-timers over part-timers. They are treated alike in virtually every respect. They do the same work. Differences that exist in the work of the employees concerns their functions (e.g. kitchen, laundry, housekeeping or nursing) and not in whether they are full-time or part-time. Both categories of employee who work in the nursing section, except students, are required to have a health care aide certificate in order to perform the work they do. Job postings are available to full-time and part-time employees alike.

12. Work by nursing aides is done in teams of three. There are 8 employees engaged during the day shift, two teams of three employees and one team of two, all of whom report to a charge nurse on duty. No distinction is made between full- and part-time employees. There is a team leader appointed for each team, who can be either a full-time or part-time employee, although, in practice, the team leader is almost always or almost exclusively a full-time employee. There are no differences in the tasks performed by the employees, whether full-time or part-time.

13. Under the employer's previous director of care, full-time and part-time employees could switch shifts with each other and accommodate each other without prior permission to do so. The

employer contended that that practice had changed, although conceded that the employees were likely to be unaware of the change. According to the employer, the new practice was that full-timers could switch with full-timers, and part-timers with part-timers, but not with each other, without the Director of Care's permission. The change in practice appears, though, not to have been implemented to any significant degree.

14. There is one policy manual for all employees, whether full-time or part-time.

15. The evening shift, from 3 p.m. to 11 p.m., has 6 employees. Part-timers tend to predominate. There is also a short shift (a tub shift) from 5 p.m. to 9 p.m. which is worked by two students. During the night shift (from 11 p.m. to 7 a.m.) there are two health care aides and a charge nurse on duty. There is also a short morning shift, from 7 a.m. to 11 a.m. - the morning tub shift. Those too are usually staffed by part-timers.

16. There are some differences. Seniority is calculated differently for full-time and part-time employees. For full-time workers seniority is calculated on the basis of years of service with the employer; for part-timers a year's seniority is calculated on the basis of 1,800 hours of work. Full-timers almost exclusively perform their work during the main day shift, from 7 a.m. to 3 p.m. and the part-timers almost exclusively work in the other times - on the evening and night shifts and during the tub shifts. However there is an overlap between the two categories of employees - part-timers replace absent full-timers and vice-versa and there is a degree of inter-change of employees as between the different shifts. There is no need for any orientation if a full-time employee replaces a part-timer, or vice-versa. Management regards the part-timers on the regular day-shift as being replacements for regular full-time incumbents. Some full-timers prefer to work evening or night shifts instead of the day shift, and they are scheduled to do so. The work required during each of the three main shifts (day, evening and night) differs in some respects, but the quantity of the work and the extent of the employees' responsibilities do not differ to any significant degree.

17. The employer presented figures of significantly higher turn-over of part-time, than full-time, employees (in 1995 - 80% of the turnover was of part-time employees; 1996 - 100%). Of the part-time employees who left employment in the high turn-over figures, some were terminated by the employer, either at the end of their probation or laid-off. The higher turn-over figure of part-time employees was somewhat explained by evidence that most of the part-time employees would like to become full-time and have more hours of work, and the shifts which are more readily available for part-time work are those at less convenient times of the day. Hence if part-time workers can get other work at more convenient times of the day, or if they can secure full-time work with another employer, they accept the alternative.

18. Similarly the employer's figures revealed that part-time workers required more than double the time off work than did full-time workers (in the latter half of 1995 - 69% compared to 31%; in the first 4 months of 1996 - 70% to 30%). There were many more requests for shift changes from part-time than from full-time employees (in the latter half of 1995, 82% were from part-timers, 18% from full-timers; in the first 4 months of 1996, 79% part-timers, 21% full-timers).

19. When the employer's figures were questioned during cross-examination, it was explained that the figures for full-time employees included all of the employer's staff, whether or not they fell into the bargaining unit, including its management. Hence the above statistics are not entirely helpful.

20. We heard evidence, the relevance of which was challenged, of the historical roots of the Board's jurisprudence for the bargaining unit distinction between full-time and part-time employees. We admitted the evidence, but reserved our ruling as to its relevance. The evidence concerned the

sociological assumptions prevalent in the 1970's when the full-time - part-time bargaining unit distinction was substantially established by the Board. We find that evidence to be relevant to our consideration, and helpful. (See *R. v. Gratt* [1982] 2 S.C.R. 819, at 836). The fact that the Board is assumed to have specialist knowledge of industrial and labour relations matters does not mean that it cannot learn from other specialists in the same field, particularly from their sociological inferences and insights of trends revealed by statistical and other research, which can serve to illuminate areas of the field which might otherwise have remained obscure, unexceptional or opaque. The expert's opinion does not usurp our function of deciding this case. It merely provides some of the sociological and theoretical elements which indirectly serve to inform our decision.

21. Professor Robert Hebdon, now of Cornell University, an expert in industrial relations, testified that the Board's jurisprudence concerning the division of part-time and full-time workers into separate bargaining units was grounded in certain sociological assumptions which, in his opinion, were no longer well-founded. He himself has not done original research on this issue, although he is well acquainted with the literature on the subject. The lack of his own original research on the topic does not vitiate his evidence. (*R. v. Valley* (1986), 26 C.C.C. (3d) 207, at 240 (C.C.C.); *R. v. Abbey* [1982] 2 S.C.R. 24; *R. v. Lavallée* [1990] 1 S.C.R. 852; *R. v. Anderson* (1914), 22 C.C.C. 455, at 476).

22. Professor Hebdon suggested that while previously there might have been a difference of interest between part-time and full-time employees, that no longer obtains to nearly the same extent. During the 1970's, when the Board's jurisprudence made a distinction between full-time and part-time employment, part-time work tended to be a lifestyle choice by people who preferred not to work full-time. Such work contrasted with the work of full-time employees who were obliged, by economic necessity, to work full-time and did not enjoy the luxury of being able to choose part-time work as a lifestyle preference. The conceptual distinction between full-time and part-time workers was made because they appeared to have significantly divergent interests.

23. Twenty years later, in the 1990's, the character of part-time work has changed fundamentally, according to Professor Hebdon. Now those who work part-time out of choice have become a smaller majority. A far higher proportion of part-time workers (36% in 1994 as compared to 12% in 1976 - a threefold jump) are involuntary part-timers. They have been unable to secure full-time work; they need their part-time jobs as the necessary means of earning a living and many of them work multiple part-time jobs. Furthermore, the relative number of part-time employees has increased as compared to full-time employees: from 12.5% of the total number of people in employment in 1976 to 18.8% in 1994. These figures are commensurate with the increasing proportion of non-standard or atypical forms of employment (part-time work, temporary work, dependent contracts, limited term contracts, 'on-call' employment) in comparison to the standard form of full-time, indefinite or permanent employment which predominates.

24. The aspirations of part-time workers have altered over the past two decades. During the 1970's their principal interest was job flexibility and convenience. In the 1990's, while that remains of concern, part-time workers have a greater interest in securing employment benefits, pension entitlements, vacation, higher wages and job security. Those interests are now more similar to those most desired by full-time employees than was previously the case.

25. To summarize Professor Hebdon's evidence: he was of the opinion that the motivation for working, as between full-time and part-time workers, was markedly distinct from that some twenty years ago. Now, full-timers and part-timers are motivated by substantially the same interests.

26. These matters to which Professor Hebdon attested were subsequently canvassed thoroughly in *Caressant Care Nursing Home of Canada Limited*, [1996] OLRB Rep. September/October 748. The



parties were given an opportunity to comment on that decision. The same is true of the Board's decision in *Marriott Corporation of Canada Ltd. (at Carleton University)*, above.

27. We have regard to, and adopt, the following in the *Marriott* case as the proper interpretation of section 5 of the *Labour Relations and Employment Law Amendment Act, 1995*:

8. It will be apparent from this brief review of the Board's recent case law that the concept of "community of interest" no longer plays a significant role in the determination of appropriate bargaining units in applications for certification, and the union urged us to take a similar approach here. CUPE suggested that we apply the "*Sick Kids* analysis" and focus our attention on the presence of a sufficient community of interest among the full-time and part-time employees and the absence of any concrete, demonstrable, serious labour relations problems flowing from their inclusion in a single bargaining unit.

9. It is tempting for the Board to presume that the reference to "community of interest" in section 5(3) was intended to incorporate the meaning the Board has recently given to that concept. We might then be prepared to find that the union's evidence of: a single employer; an overlap in certain job functions, classifications, hours of work and supervision; and a union executive drawn from the ranks of both types of employees, satisfies that test. However, we do not believe that that was the Legislature's intention.

10. First, and perhaps most obviously, section 5(3) does not reproduce the "*Sick Kids* test" nor does it make any reference to "serious labour relations problems". That part of the *Sick Kids* analysis is noticeably absent, and we do not think it can be inferred from the reference to community of interest. "Community of interest" and "serious labour relations problems" are different, albeit related, concepts. "Serious labour relations problems" are, among other things, the filter through which an allegedly deficient "community of interest" must pass. Second, the Board has said that most, if not all, employee groupings share "a community of interest" by virtue of working for the same employer and that many "communities of interest" can be located within a given workplace. Were we to take this approach to the requirements of section 5(3), it is plain that all, or virtually all, such applications would be doomed to failure. In our view, that cannot have been the Legislature's intention. A more satisfactory approach, from a statutory interpretation point of view, is to assume that the Legislature intended its words to have some meaning. That meaning can be found in the more "traditional" approach to the concept of community of interest expressed in such cases as *Board of Education for the Borough of Scarborough*, [1980] OLRB Rep. Dec. 1713; *Toronto Airport Hilton*, [1980] OLRB Rep. Sept. 1330, and *Leon's Furniture Limited*, [1976] OLRB Rep. May 232.

28. In this case the full-timers and the part-timers are employed on virtually identical terms. The full-timers enjoy more day shift work than do the part-timers, but in virtually all other respects they are treated alike. The parties have a different method for calculating seniority. Part-timers accrue seniority on the basis of their total hours; full-timers on the basis of years of service. That is a difference, but it is not one which has caused any labour relations problems and it is one which has a rational kernel. Full-time workers would tend to work the same number of hours each week and each year; part-timers would not necessarily work the same number of hours. There might be claims of discrimination or unfairness if those part-timers who worked fewer hours in any year were treated as having the same seniority as those who worked significantly more. This is not to say that one method of calculation is better than another-rather it is intended to show that the different method of calculation has a rational basis and does not suggest any conflict of interest between the two categories of employee. There is a difference in their seniority calculation; nothing more. It has no wider significance for the purposes of determining appropriate collective bargaining structures. To use the categories for assessing a community of interest used in *Usarco Limited*, [1967] OLRB Rep. September 526 at 529, the part-time and full-time employees perform the same work, they are employed under virtually identical terms and conditions of employment, they work in the same workplace with each other and there is a functional coherence and interdependence between them. They have a very substantial community of interest.

29. While adopting the approach of the Board in the *Marriott* case, above, we come to a different conclusion than the Board did in that case because of the factual differences between that case and this. In that case there was a significant divergence of interest between the full-time and the part-time employees. There the Board was faced with a part-time workforce of students who were quintessentially temporary employees. That is not the case here. What we have is an integrated work force, working inter-changeably, sharing substantively the same terms and conditions of employment, being treated alike in virtually all significant respects and having regard for themselves-and in large measure being treated as such by management-as being of the same circumstance. We are dealing with part-time employees who are substantially long-term employees. They seek secure and stable employment like their full-time counterparts.

30. From the evidence presented to us, and having regard to the parties' respective submissions on the issues in dispute between them, we are satisfied that there is a substantial community of interest between the full-time and the part-time employees in a combined unit. We accordingly determine that the union has met its burden of proof in this matter and that the existing bargaining unit is appropriate because a community of interest exists between the full-time and the part-time employees.

31. Accordingly, the employer's application is dismissed.

32. A concurring opinion of Board Member Brennan may follow.

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**0013-97-JD; 1289-97-JD; 4204-96-JD; 4206-96-JD** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 508, Applicant v. **Comstock Canada Ltd.** and Labourers' International Union of North America, Local 1036, Responding Parties; Sheet Metal Workers' International Association, Local 504, Applicant v. Comstock Canada Ltd. and Labourers' International Union of North America, Local 1036, Responding Parties; Millwright District Council of Ontario and its Local 1425, Applicant v. Comstock Canada Ltd. and Labourers' International Union of North America, Local 1036, Responding Parties; Iron Workers District Council of Ontario and International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 786, Applicants v. Comstock Canada and Labourers' International Union of North America, Local 1036, Responding Parties

**Construction Industry - Jurisdictional Dispute - Plumbers' union, Sheet Metal Workers' union, Millwrights' union, Ironworkers' union and Labourers' union disputing assignment of certain work involving uncrating and unpacking of equipment and dismantling and/or disposal of packaging material - Board ruling that work of uncrating equipment properly assigned to the trades and should not have been assigned to the Labourers - Where packaging material is dismantled and/or disposed of as equipment or machinery is being uncrated, work of dismantling and disposal of packaging material should be assigned to the trades - Where equipment or machinery is entirely uncrated, dismantling or disposal work should be assigned to Labourers' union**

**BEFORE:** *Robert Herman*, Alternate Chair, and Board Members *W. N. Fraser* and *G. McMenemy*.

**APPEARANCES:** *Pierre Sadik* and *Mike Stewart* for Millwright District Council of Ontario and its Local 1425; *J. Raso*, *Tom Whynott* and *K. Brown* for Sheet Metal Workers' International Association, Local 504; *C.M. Mitchell* and *Bill Suppa* for Labourers' International Union of North America, Local 1036; *Gary Caroline* and *James Lajeunesse* for Iron Workers District Council of Ontario and International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 786; *Laurence C. Arnold* and *Bryan Christie* for United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 508; *Denis Flynn* for Comstock Canada Ltd.

**DECISION OF THE BOARD;** October 15, 1997

1. These are four related jurisdictional disputes filed pursuant to the provisions of section 99 of the Act, for which the Board scheduled a consultation.

2. The work in dispute comprises one portion of the contract that Comstock Canada Ltd. ("Comstock") had to erect and install a "direct strip mill" for Algoma Steel Corporation. The work involves the uncrating and unpacking of equipment which is subsequently rigged and/or installed, and the dismantling and/or disposal of the packaging material for that equipment or any scrap that results from its unpacking. Comstock assigned different parts of the work in dispute to members of Local 504 of the Sheet Metal Workers, Local 786 of the Ironworkers, Local 508 of the United Association, and Local 1425 of the Millwrights. None of the work was assigned to members of Local 1036 of the Labourers.

3. The Labourers subsequently filed a grievance with Comstock alleging that their collective agreement had been breached with respect to the "stripping of scrap crates". Ultimately the grievance was adjourned, and the four instant disputes were filed.

4. At the consultation, the Board provided the following decision orally:

- (1) As the Board ruled earlier, it is satisfied that the work of uncrating the equipment or machinery was properly assigned to the trades, and should not have been assigned to the Labourers. By "uncrating", the Board means and includes the removal of the shell in which the equipment or machinery was contained, and the removal of any packaging material or any other material in which the equipment was shipped or by which it was buttressed. Included in the concept of "packaging material" is any material which forms part of the packaging or support for the equipment.
- (2) The remaining question is over the correct assignment of the dismantling and disposal of this packaging material, whether it be the outside shell or any packaging material surrounding or buttressing the equipment or machinery.
- (3) In balance, it appears to the Board that the following should apply with respect to the assignment made by Comstock. Where the shell or packaging material is dismantled and/or disposed of as the equipment or machinery is being uncrated and/or rigged, then this is the work of the trades, and not the Labourers. Included in this description would be cutting any of the packaging or shell to size, the removal of the shell itself, and the disposal of any of the packaging material in a dumpster or the putting of it on a flat bed truck for removal, or other means of disposal.
- (4) Once the equipment or machinery is entirely uncrated or unpackaged, and all that remains is the crate or other packaging material, separate and apart from the equipment or machinery, then the dismantling of or disposal of or clean-up of this material is the work of the Labourers.
- (5) We might usefully provide two examples to illustrate our decision. First, as a crate is removed, and as the sides of the shipping crate are torn off, whether they need to be cut



up and put in a dumpster or not, this would be the work of the trades. Second, after the crate is torn off, should the sides of the crate simply be lying there on the ground after the equipment has been extracted from all of its packaging, the disposal of the material left lying around on the ground would be the work of the Labourers.

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**3829-95-U; 4029-95-R; 4039-95-R; 0675-96-U** International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 58, Toronto and T.C. Sclocco, Applicants v. **Crocodile Labour Services Inc.**, MCA Concerts Canada, Responding Parties v. Victoria M. Desroches, Intervenor; International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 58, Toronto, Applicant v. Crocodile Labour Services Inc., Responding Party; International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 58, Toronto, Applicant v. Crocodile Labour Services Inc., and MCA Concerts Canada, Responding Parties v. Victoria M. Desroches, Intervenor

**Certification - IATSE applying to represent bargaining unit of stagehands employed at Molson Amphitheatre at Ontario Place - Application made during off-season when theatre closed - Board applying *TheatreCorp* decision and concluding that in theatrical industry only those persons working on the application filing date should be eligible to vote - Application dismissed**

**APPEARANCES:** *John R. Evans* and *James Fuller* for the applicant union; *John Barrack* and *Brian Low* for Crocodile Labour Services Inc.; *Jamie Knight*, *Kristin Taylor* and *Paul Corcoran* for MCA Concerts Canada.

**BEFORE:** *Janice Johnston*, Vice-Chair.

**DECISION OF THE BOARD;** October 9, 1997

1. Board File No. 4029-95-R is an application for certification. Board File No. 4039-95-R is an application pursuant to section 1(4) of the *Labour Relations Act, 1995* (the "Act") and Board File Nos. 3829-95-U and 0675-96-U are unfair labour practice complaints filed pursuant to section 96 of the Act. On agreement of the parties, a representation vote has not been held in the application for certification.

2. These matters have been the subject of several decisions by differently constituted panels of the Board. With the agreement of the parties, these matters were put before me to deal with one specific issue.

3. At the hearing on this matter, the parties filed the following Agreed Statement of Facts and Issue.

#### AGREED STATEMENT OF FACTS AND ISSUE

##### FACTS

1. The Union applied for certification on February 20, 1996.

2. At the time of the application for certification ("the application"), no employees were working for Crocodile at the Molson Amphitheatre. The Molson Amphitheatre is a seasonal operation which commenced its 1995 season in May and concluded its season in September. The normal season is from May until September each year and accordingly the 1996 season was due to commence in May.
3. The last day on which work was performed by employees of Crocodile prior to the application, falling within the scope of the bargaining unit which the Union seeks to represent, was on or about October 6, 1995. The vast majority of those employees were not given notice of termination by Crocodile nor were they provided with a Record of Employment stating that they were no longer employed.
4. Attached hereto and marked as Exhibits "16" and "17" are the Contracts for Services between Crocodile and Universal which governed their relationship for the years 1995 and 1996. An agreement for the 1996 season was reached on May 5, 1996.
5. The next date following the application on which work was performed by employees of Crocodile, falling within the scope of the bargaining unit which the Union seeks to represent, was in May 1996.
6. For purposes of the within preliminary motion only and without any admission of liability by the respondents, the parties agree that the Board should assume that the material facts pleaded by the Union in Board File Nos. 3829-95-U, 4029-95-R, 4039-95-R, 0675-96-U are true and accurate.

#### ISSUE

7. Should the application be dismissed given that there were no employees of Crocodile actually performing work, falling within the scope of the bargaining unit which the Union seeks to represent, on February 20, 1996 which date fell within the October-May off season at the Molson Amphitheatre, and/or given that there was no assurance as of that date that Crocodile would have any employment to offer within the scope of the bargaining unit for the 1996 season?
4. At the outset of the hearing, the parties were in agreement that this issue would be decided on the basis of the agreed statement of facts and the pleadings of the union. No one sought to call *viva voce* evidence.
5. The applicant, the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 58 (the "union" or "IATSE") is a trade union pursuant to section 1(1) of the Act. IATSE is a craft union pursuant to section 9(3) of the Act which represents, amongst others, stagehands. MCA Concerts Canada ("MCA") is a corporation which owns, maintains, operates and manages the Molson Amphitheatre, a large open-air concert venue located at 909 Lakeshore Boulevard West, Toronto, commonly known as Ontario Place. The responding party, Crocodile Labour Services Inc. ("Crocodile" or the "employer") is a supplier of labour services at the Molson Amphitheatre. Specifically, Crocodile employs and supervises persons who have skill and experience as stage hands and in performing related labour. A review of the contracts for services referred to in paragraph three of the agreed statement of facts indicates that at the time of the application for certification, on February 20, 1996, MCA and Crocodile were bound to a contract which was intended to set out the terms and conditions that would govern the supply of labour by Crocodile to MCA, and the fees to be paid for the labour which is supplied.
6. Accordingly, the issues before me are:
- (a) whether or not there were any individuals with an employment relationship with Crocodile; and

- (b) is it a requirement in this industry that there be more than one employee actually performing bargaining unit work on the application date.

7. The relevant sections of the Act are section 7(1), (12), (13), (14), section 8 and section 9, which read as follows:

7. (1) Where no trade union has been certified as bargaining agent of the employees of an employer in a unit that a trade union claims to be appropriate for collective bargaining and the employees in the unit are not bound by a collective agreement, a trade union may apply at any time to the Board for certification as bargaining agent of the employees in the unit.

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(12) The application for certification shall include a written description of the proposed bargaining unit including an estimate of the number of individuals in the unit.

(13) The application for certification shall be accompanied by a list of the names of the union members in the proposed bargaining unit and evidence of their status as union members, but the trade union shall not give this information to the employer.

(14) If the employer disagrees with the description of the proposed bargaining unit, the employer may give the Board a written description of the bargaining unit that the employer proposes and shall do so within two days (excluding Saturdays, Sundays and holidays) after the day on which the employer receives the application for certification.

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8. (1) Upon receiving an application for certification, the Board may determine the voting constituency to be used for a representation vote and in doing so shall take into account,

- (a) the description of the proposed bargaining unit included in the application for certification; and
- (b) the description, if any, of the bargaining unit that the employer proposes.

(2) If the Board determines that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appear to be members of the union at the time the application was filed, the Board shall direct that a representation vote be taken among the individuals in the voting constituency.

(3) The number of individuals in the proposed bargaining unit who appear to be members of the trade union shall be determined with reference only to the information provided in the application for certification and the accompanying information provided under subsection 7(13).

(4) The Board shall not hold a hearing when making a decision under subsection (1) or (2).

(5) Unless the Board directs otherwise, the representation vote shall be held within five days (excluding Saturdays, Sundays and holidays) after the day on which the application for certification is filed with the Board.

(6) The representation vote shall be by ballots cast in such a manner that individuals expressing their choice cannot be identified with the choice made.

(7) The Board may direct that one or more ballots be segregated and that the ballot box containing the ballots be sealed until such time as the Board directs.

(8) After the representation vote has been taken, the Board may hold a hearing if the Board considers it necessary in order to dispose of the application for certification.



(9) When disposing of an application for certification, the Board shall not consider any challenge to the information provided under subsection 7(13).

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9. (1) Subject to subsection (2), upon an application for certification, the Board shall determine the unit of employees that is appropriate for collective bargaining, but in every case the unit shall consist of more than one employee and the Board may, before determining the unit, conduct a vote of any of the employees of the employer for the purpose of ascertaining the wishes of the employees as to the appropriateness of the unit.

(2) Where, upon an application for certification, the Board is satisfied that any dispute as to the composition of the bargaining unit cannot affect the trade union's right to certification, the Board may certify the trade union as the bargaining agent pending the final resolution of the composition of the bargaining unit.

(3) Any group of employees who exercise technical skills or who are members of a craft by reason of which they are distinguishable from the other employees and commonly bargain separately and apart from other employees through a trade union that according to established trade union practice pertains to such skills or crafts shall be deemed by the Board to be a unit appropriate for collective bargaining if the application is made by a trade union pertaining to the skills or craft, and the Board may include in the unit persons who according to established trade union practice are commonly associated in their work and bargaining with the group, but the Board shall not be required to apply this subsection where the group of employees is included in a bargaining unit represented by another bargaining agent at the time the application is made.

(4) A bargaining unit consisting solely of professional engineers shall be deemed by the Board to be a unit of employees appropriate for collective bargaining, but the Board may include professional engineers in a bargaining unit with other employees if the Board is satisfied that a majority of the professional engineers wish to be included in the bargaining unit.

(5) A bargaining unit consisting solely of dependent contractors shall be deemed by the Board to be a unit of employees appropriate for collective bargaining but the Board may include dependent contractors in a bargaining unit with other employees if the Board is satisfied that a majority of the dependent contractors wish to be included in the bargaining unit.

## Argument

8. What follows is a very abbreviated version of the submissions made by the parties. Much of the argument was made in the alternative, and given the basis upon which I am going to determine this matter, it is not necessary to set it out in detail.

9. Counsel on behalf of MCA proceeded first in argument. Counsel argued that there are two routes open to the Board to follow in dealing with these issues. The first route he referred to as the "section 8" route. Counsel argued that after reviewing all of the materials filed, which included the agreed Statement of Facts, the Board should conclude pursuant to section 8(2) that as there were no employees in the bargaining unit, the union could not have forty per cent support. As there were no "employees" in the bargaining unit, it is not appropriate for the union to apply to become their bargaining agent.

10. The second approach urged upon me by counsel for MCA revolved around an interpretation of section 9 of the Act. Pursuant to section 9(1) of the Act, counsel suggested that the application for certification should be dismissed because the union failed to establish that there is an appropriate unit for collective bargaining, as at the time the application was filed there was not more than one employee in the bargaining unit. Counsel pointed out that the last day of work for the employees occurred in October, 1995. On the application date, there were no employees employed at the Molson Amphitheatre and no employees returned to work until May, 1996. At the time the application was filed, MCA and

Crocodile had not signed a contract for the provision of stagehands for the 1996-1997 season. Accordingly, as there were no employees on the application date, the Board ought to dismiss the application for a failure to meet the requirements of section 9(1).

11. In the final alternative, counsel for MCA argued that if the Board was not prepared to decide the issue based on the analysis outlined above, which he referred to as the "broader approaches", then the Board should apply the reasoning utilized by the Board in *TheatreCorp Ltd.*, [1992] OLRB Rep. March 388. Counsel pointed out that the *TheatreCorp* case picked up the approach utilized by the Board in dealing with applications for certification in the construction industry. In an application for certification in the construction industry, the Board looks to the number of employees who were actually performing bargaining unit work on the date of the application. Counsel suggested that the logic behind the adoption of the policy for the construction industry was the same as in the case before me. In support of his argument, counsel referred the Board to: *TheatreCorp Ltd.*, *supra*; *Mel Evans Electric Div. of 1136234 Ontario Limited*, [unreported] decision dated November 27, 1996; *Milnes Fuel Oil Ltd.*, [1969] OLRB Rep. Oct. 847; *Cooper Construction Company Limited*, [1982] OLRB Rep. Aug. 1152; *Meridian Building Group Ltd.*, [1974] OLRB Rep. July 444; *Brown Boveri Howden Inc.*, [1987] OLRB Rep. March 316; *F. Mohr Construction Inc.*, [unreported] decision dated January 20, 1997; *Donvan Services Ltd.*, [unreported] decision dated May 7, 1997.

12. Counsel for Crocodile started his submissions by agreeing with the approach articulated by counsel for MCA. He suggested that pursuant to section 9(1) the Board was required to determine whether there was more than one employee in the appropriate bargaining unit. In reaching a determination as to whether or not there were "employees" in the bargaining unit, the Board is required to determine whether there are any individuals in an employment relationship with the employer. Counsel agreed that in the industrial sector the Board has defined individuals to be in an employment relationship with an employer even if they are absent from the workplace at the time of the application for certification, as long as there is a reasonable expectation that they shall return to work. However, counsel pointed out that the jurisprudence demonstrates that there are no situations in which the Board has granted an application for certification which has been brought for a "seasonal operation" in a period of time when the seasonal operation was not ongoing and no employees were working.

13. In this case, counsel for Crocodile argued that there were no individuals in an employment relationship as there was no reasonable expectation that persons who had been employed in October, 1995 would return to work the following year. No one worked after October, 1995, which was four months prior to the application date. In support of his assertion that there were no employees in the bargaining unit, counsel also pointed out that although Crocodile and MCA had a contractual relationship that extended from March 1, 1995 to February 29, 1996, there was no certainty that this contractual relationship would continue for 1996-1997. As the contract between Crocodile and MCA did not come into effect until May, 1996, at the time of the application for certification there was no guarantee that any of the employees who had worked for Crocodile in 1995 would have a job to return to in 1996.

14. Counsel argued that as the Molson Amphitheatre was covered with snow when the application for certification was filed, from a policy point of view, the Board needs to consider what is the appropriate time to file an application for certification in this industry. Counsel urged the Board to follow the reasoning in the *TheatreCorp* case and come to the same conclusion reached in that case, that those eligible to vote in a representation vote will be those employees who were at work in the bargaining unit on the application date. In this case, as there was no one at work on the date of the application, it should be dismissed. In support of his argument, counsel referred the Board to *Burns International Security Services Limited*, [1996] OLRB Rep. Mar./Apr. 192; *SGS Supervision Services Inc.*, [1982] OLRB Rep. Jan. 105; *Rix-Athabasca Uranium Mines Limited*, [1961] OLRB Rep. July

127; *Pilkington Glass Limited*, [1970] OLRB Rep. Aug. 566; *Canadian Linen Supply (Ontario) Limited*, [1965] OLRB Rep. Oct. 467; *Janin Building & Civil Works Ltd.*, [1970] OLRB Rep. July 470.

15. Counsel for the union agreed that there were no employees working at the Molson Amphitheatre on the date of the application for certification. However, he disagreed with the assertions of counsel for MCA and Crocodile that there were no “employees” on the application date. In his view, there were individuals in an employment relationship with Crocodile on the application date, as they had a reasonable expectation that they would return to work when the season started in May, 1996. Counsel for the union argued that it was not relevant whether or not individuals were actually at work on the application date. The Board in this case should determine whether or not there were individuals in an employment relationship with Crocodile on the application date. In reaching a conclusion on this question, the Board should look at whether or not there was a reasonable expectation that various individuals would return to work for Crocodile in the 1996 season.

16. Counsel for the union argued that the Board should not follow the reasoning in the *TheatreCorp* case as it should not be applied in the circumstances of this case. He pointed out that the facts in this case are quite unique and that the rationale in the *TheatreCorp* case was inapplicable. In this case, in counsel’s view, it was not appropriate to apply the policy articulated in *TheatreCorp*, as had the union waited until the season commenced in May, it would have faced arguments from MCA and Crocodile that the application should be dismissed for delay. In support of his argument, counsel referred the Board to *Smiths Construction Limited*, [1984] OLRB Rep. March 521 and *Calvano Lumber and Trim Co. Limited*, [1989] OLRB Rep. Apr. 337.

17. In response, counsel for MCA reiterated his position that as there were no employees in the bargaining unit on the application date, pursuant to section 9(1) of the Act, this application should be dismissed. In the alternative, should the Board conclude that there were individuals with an employment relationship on the date of application, the Board should dismiss this application pursuant to the reasoning set out in the *TheatreCorp* case. Clearly, there were no employees at work on the application date; therefore, counsel submitted that this application for certification should be dismissed. In his view, the *TheatreCorp* case was not distinguishable from the case before me.

### Decision

18. After having given this matter a great deal of consideration, I am of the view that I simply do not have enough facts to determine whether or not there were individuals who had an employment relationship with Crocodile on February 20, 1996. Although I do have some facts, what gives me concern, amongst other things, is the lack of any historical perspective or past practice in this case. I do not know, for example, how many individuals return, year after year, to employment with Crocodile, or whether the workforce changes from year to year. As I cannot answer these questions, I cannot determine whether there is any continuity of employment from year to year or even day to day. The facts agreed to by the parties are extremely limited and the union’s pleadings do not provide assistance with this question. Accordingly, based on the limited information I have, I cannot determine whether or not there were any individuals with an employment relationship with Crocodile. In order to do so, it would be necessary to hear further from the parties.

19. However, this does not end the matter. As was suggested by the parties, there is a narrow basis upon which this application can be determined, namely by answering the question “Is it a requirement in this industry that there be more than one employee actually performing bargaining unit work on the application date?”. For all of the reasons which follow, the answer to the above-framed question is “Yes”. For the purposes of answering this question, I am prepared to assume, clearly without finding, that Crocodile did have employees on the application date.



20. As a starting point, it is essential to stress that this is not the first case to deal with this question. In the *TheatreCorp* case, *supra*, the question was answered in the affirmative. Although counsel for the union sought to distinguish the case before me on the basis that we are dealing with live music shows in this case, whereas in *TheatreCorp* the Board was dealing with live theatrical productions, I am of the view that it is a distinction without a difference. The production requirements of a live musical show or a live theatrical show are similar in that both require, for example, staging and lighting. Both create a similar employment context for stagehands. Accordingly, while the facts may or may not have been somewhat different in the *TheatreCorp* case, the general observations of the Board with regard to this industry which were made in *TheatreCorp* are equally applicable to the case before me. The Board in *TheatreCorp* stated:

73. We find it appropriate to make reference to two matters ancillary to these applications. First, in this case the parties focused their attention and submissions upon the sixteen employees at work on the application date. In so doing the parties recognized the special problems posed by the employment of stagehands within the theatrical industry. Employment within the industry is necessarily transitory. Stagehands are generally dispatched from the union hall to different venues within the union's jurisdiction. At any particular venue members may quite literally be here today and gone tomorrow. Theatrical productions at any particular location may last for periods of time which range from hours or days to months or even years. The "mix" of stagehands at a particular venue on any given day may be different depending on the needs of the particular theatrical production or at what phase of the production the stagehand is working. The frequency of any particular theatrical production, the needs of a particular theatrical production, the availability of financing for such productions must inevitably affect the level of employment of IATSE members not only within the industry generally but also at specific venues such as the Elgin Winter Garden Theatre. Theatres may be "dark" for periods of time until the production or presentation of new theatrical performances is arranged. Conversely "problems" or the requirement to meet deadlines may require the employment of more stagehands at a venue if only on a short term basis. Corporate entities such as Theatremark may produce or present a number of theatrical productions at different venues within IATSE's jurisdiction whether simultaneously or not.

74. For all of these reasons the complement of stagehands at a particular venue may vary markedly from day to day making it very difficult to pin down with any precision individuals who should be treated unequivocally as "employees in the bargaining unit" as required by the Act. Naturally the union's hiring hall also significantly affects the employment of stagehands within the industry.

75. In light of these various considerations, the inherent transitory, uncertain and ephemeral nature of employment of stagehands in the theatrical industry and the use of the hiring hall within the industry we agree that it is most appropriate to use the application date in order to "ascertain the number of employees in the bargaining unit at the time the application was made" as required by the Act.

76. For purposes of "the count", the employee complement is that which exists on the application date. We fully recognize that the number of employees may well be different on that day from the day before or the day after. Nevertheless a bright line test which focuses on the application date (as is also the case in the construction industry) is certain, easy to understand and administer and avoids costly and time consuming litigation associated with other possible alternatives. It is a compromise which avoids the complex and uncertain determinations which would need to be litigated if the Board and the parties were required to inquire into reasons why certain persons were/were not working at a particular venue either on a particular day or during any chosen "representative period" during which any number of stagehands *could* have worked at the venue. ...

21. In reviewing the limited facts before me, it is clear that in this case the work is seasonal and transitory in nature. The Molson Amphitheatre is open annually from May to September. From October to April the facility is closed. During the period in which the facility is closed, the individuals who were employed in the previous season are free to pursue other employment opportunities. This type of transitory work bears a significant similarity to the construction industry, some of which is exclusively

seasonal, as contrasted to what the Board loosely refers to as the “industrial sector” which predominantly refers to operations which run on a year-round basis. In the industrial sector, the nature of the work is generally more permanent and less transitory than in the construction industry. While it may very well be that the workforce in this industry and in particular at this venue is not as transitory as the construction industry, it is also obviously not as stable as a year-round industrial or commercial enterprise. This industry generally lies somewhere in the middle on the continuum which has the “industrial” sector at one end and the “construction” sector at the other. However, in my view, it is more analogous to the construction industry than the industrial sector.

22. Although the facts with regard to the relative permanence of employment at this venue vis a vis other venues in this industry is not as clear as it could have been, there is no reason to conclude that employment at this venue is any less or more transitory than any other venue in this industry. However, even if employment at the particular venue at issue in this case was slightly more or slightly less transitory than at others, I agree with the observation in *TheatreCorp* that it makes sense to adopt a bright line test that will be consistently applied in this industry. Based on the Board’s labour relations experience, I am prepared to take judicial notice that this industry can be both seasonal and transitory in nature and as already noted more akin to the construction industry than the industrial sector.

23. In addition, for a variety of other reasons, it makes sense to require trade unions seeking to represent employees working in this industry to apply for certification while the venue is operating. In the “off-season” or when the theatre is “dark”, especially in this case when the application for certification was made four months after the last day worked, the Board will inevitably be faced with the difficult task of determining which individuals have an employment relationship with the company and which individuals do not. This type of litigation, depending on the extent of the disagreement, can be extremely time-consuming and expensive. If there is any lengthy delay determining the eligible voters, another season or another show could commence and in all likelihood the workforce could change significantly. If the trade union no longer has the requisite support, it may be difficult to win the representation vote and even if it is successful in that endeavour, the union may find that the bargaining rights will be difficult to maintain. In addition, on a purely practical note, if the vote is to take place during the off-season or when the venue is not operating, it could be difficult to simply locate potential voters and could result in the Board being unable to meet the five-day vote requirement in the Act.

24. Accordingly, for all of these reasons, it makes sense to have a bright line test in this industry which, as in the construction industry, focuses on the application date as the relevant date for determining who is eligible to cast a ballot. It has been noted in decisions involving construction industry applications for certification that although on occasion it may appear to work an unfairness on the trade union to have such a rigid approach to determining who is eligible to vote, ultimately the union is in control of the application date. The same is true for this industry. Therefore, in this industry, in order to be eligible to vote in a representation vote, an individual must be an employee of the employer and be at work in the bargaining unit on the date of application.

25. As there were no employees performing bargaining unit work on the application date in this case, the application for certification is dismissed. The parties did not address the issue of the imposition of a bar in the event that the application for certification was dismissed. As such, it is not appropriate for me to deal with this issue and it can be dealt with if and when it becomes necessary to do so should the union initiate another application for certification.

26. The applicant is directed to advise the Board and the other parties within 15 days of receipt of this decision concerning how it wishes to proceed with the unfair labour practice complaints and the related employer application.

27. I am not seized of this matter.
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**3515-95-U John Demetriades, Applicant v. Canadian Union of Public Employees, Local 1144, Responding Party v. St. Joseph's Health Centre, Intervenor**

**Duty of Fair Representation - Unfair Labour Practice - Applicant asserting that union's failure to initiate judicial review application of arbitration decision (in circumstances where union allegedly agreed that such an application ought to be brought) violating the Act - Application dismissed**

**BEFORE:** *Bram Herlich*, Vice-Chair.

**APPEARANCES:** *Harry Kopyto* and *John Demetriades* for the applicant; *B. Sheehan*, *K. McNama* and *C. Jankowski* for the responding party; *John E. Brooks* and *Mike Ryan* for the intervenor.

**DECISION OF THE BOARD;** September 18, 1997

1. In a decision dated April 10, 1996 in this matter, significant portions of the applicant's complaint that the responding party (the "union") had violated section 74 of the *Labour Relations Act, 1995* were dismissed pursuant to a motion brought by the union and supported by the intervenor (also referred to as the "hospital" or the "employer").

2. Only one aspect of the applicant's claim survived that motion. The issue remaining to be litigated was described in the April 10, 1996 decision in the following terms (at paragraph 11 and following):

11. There is one further aspect of the application which I am unable to dispose of in this fashion. This relates to the applicant's claim that the union has violated the Act in refusing to judicially review the January, 1995 arbitration award. I am unaware of any case in which this Board has concluded that a refusal to judicially review an arbitration award constitutes a breach of the duty of fair representation; no such case was referred to by the parties. But while the applicant may well have to make new law to succeed in this case, I simply cannot ignore the fact that the applicant has specifically pleaded that the representative of the union explicitly agreed that an application for judicial review ought to be commenced. The union specifically denies that there was ever any agreement or undertaking or assurance that such a proceeding would be commenced - indeed, it asserts that the applicant was explicitly advised on the day that the "Acknowledgement and Release" was executed that such a proceeding would not be commenced and that there was no recommendation to do so. Ultimate findings of fact will have to await the evidence. For the purposes of the instant motion, I have accepted the facts pleaded by the applicant as true and provable. In this context, I am unwilling to find, at least at this preliminary stage of the proceedings, that an allegation that a union has failed to follow through on an explicit agreement to judicially review an arbitration award does not disclose a *prima facie* violation of the duty of fair representation.... This aspect of the application must proceed to a hearing on the merits.

12. Lest there be any lingering confusion, hearing in this matter will continue. That hearing, however, will be restricted to the allegation that the union's failure to initiate an application for judicial review of the arbitration decision dated January 18, 1995 was, in the circumstances of this case, a violation of section 74 of the Act...

3. In accordance with the Board's decision, six further days of hearing were held in this matter.

4. Most of the basic background facts giving rise to the remaining issue in this matter are not seriously disputed, at least in their broad parameters.



5. The applicant is a former employee of the hospital. A series of grievances was filed on his behalf to protest various disciplinary measures, including his discharge, which had been imposed on him by the hospital. In addition, the applicant filed a complaint with this Board alleging that the employer's disciplinary measures constituted unfair labour practices. That application (Board File 3321-93-U) came before a (different) panel of this Board and in a decision dated March 11, 1994, that panel deferred consideration of the matter pending arbitration hearings which were scheduled to commence some two weeks later.

6. Although the applicant's various discipline grievances were referred to the same arbitrator, it appears that they were not all heard at the same time. In a decision dated May 6, 1994, the applicant's 5 day suspension was reduced to a written warning.

7. The applicant applied to this Board for a reconsideration of its decision deferring his complaint against the hospital. That application was dismissed in a decision dated June 7, 1994. The unfair labour practice complaint remained deferred pending completion of the arbitration proceedings.

8. The arbitration proceedings continued on June 30, 1994 and in a decision dated August 4, 1994 the Board of Arbitration issued an award on consent of the employer, the union and the applicant. That award reinstated the applicant on certain terms and conditions. Essentially, the applicant was to be subject to a 24 month period of probation during which time the arbitrator was to remain seized to hear any allegation by the employer that the applicant had breached the terms of the award. The consent award also stipulated that the applicant was to stay his application before this Board pending his successful completion of the probationary period, following which his application to this Board was to be dismissed on consent.

9. It was not long, however, before the hospital advised the board of arbitration of its view that the applicant had breached the terms of his probation. Arrangements were made to reconvene the board of arbitration and a hearing was scheduled for October 4, 1994. The next day a two sentence award was issued; it reads:

I order that no one in bargaining [sic] or in management discuss Mr. Santos' proposed evidence except counsel for the Union and counsel for the employer.

I order that the employer provide particulars as soon as possible of any incident it intends to rely upon at the adjourned hearing.

10. While I will return to some of the circumstances of this award, some further details are in order. When the parties appeared for the commencement of the hearing on October 4, 1995, they discovered that the hospital nominee was unavailable on that day. Various options were discussed and, as a consequence, arrangements were made to have a different employer nominee sit on the board of arbitration that day. This was an option specifically consented to by the union. Furthermore, it was not disputed that the union granted its consent to proceed in that fashion based largely, if not exclusively, on the fact that that manner of proceeding was the option preferred by the applicant.

11. While this turn of events is perhaps not earth shattering, it is, however, curious that when the award cited above was released it listed the original hospital nominee as a member of the board and bore his signature despite the fact that he was not in attendance at the hearing.

12. Further to the arbitration award just cited, the hospital, by letter dated November 29, 1994, provided particulars and supporting documents upon which it intended to rely before the board of arbitration at the hearing which was scheduled to continue on January 17, 1995. These were forwarded to Cynthia Watson who acted as counsel for the union with respect to the applicant's arbitration proceedings.

13. Ms. Watson arranged to meet with the applicant and others on January 10, 1995 to prepare for the hearing scheduled one week later. In fact, three separate meetings were held in relation to those proceedings. Among the participants who attended some or all of the meetings held on January 10, 13, and 16 (referred to collectively as the "January meetings") were Ms. Watson, the applicant, several members of the union executive: Christine Jankowski, President; John Konopka, Chief Steward; and Ben Medina, Recording Secretary. Also in attendance, at some of the meetings, was Karen McNama, the CUPE National Representative assigned to assist the Local.

14. At these meetings, much time was spent, likely in the range of a total of 9-15 hours, discussing options, strategy and tactics. The bulk of the evidence before me pertained to those discussions and the resulting decisions taken at these meetings. With the exception of Ms. Jankowski and Ms. McNama, each of the above named participants testified before me.

15. I will return to describe the substance of the discussions at these meetings in slightly greater detail. It is more convenient to simply continue with a basic narrative of the salient events. As a result of decisions taken at these meetings, no one from the union attended at the scheduled arbitration hearing. On the day prior to the scheduled hearing, union counsel forwarded a letter to the board of arbitration. That letter concluded as follows:

... the Grievor has requested that we withdraw from proceeding before this Board on the basis that this Board has lost jurisdiction. Given that justice must not only be done but be seen to be done the Union accedes to the Grievor's request. Accordingly, we will not be participating in the hearing dates set for January 17 and 18, 1995 insofar as we take the position that the Board has committed a breach of natural justice and has lost jurisdiction over this matter.

16. The arbitration hearing proceeded in the absence of the applicant and the union and, in a decision dated January 18, 1995, the applicant's employment with the hospital was terminated for cause.

17. The applicant next proceeded to revive his unfair labour practice complaint against the employer. With the assistance of union counsel (at the union's expense), an application for interim relief was filed in relation to the main application. In a decision dated February 28, 1995 the Board (differently constituted) dismissed the request for interim relief (Board File No. 4134-94-M).

18. The main application (Board File No. 3321-93-U) was heard by a (differently constituted) panel of the Board and, in a decision dated July 4, 1995, was dismissed. A request for reconsideration of that decision was dismissed by decision dated August 15, 1995.

19. On December 28, 1995, the instant application was filed. As already indicated, the only issue remaining in this application is whether the union violated its duty of fair representation by failing to commence an application for judicial review in respect of the decision of the board of arbitration.

20. Before returning to a slightly more detailed description of the substance of the discussions and resulting decisions taken at the three meetings held prior to the scheduled arbitration hearing on January 17, 1995, a few comments regarding the evidence generally and issues of credibility are in order.

21. First of all, it may be helpful to point out that shortly before the January meetings, the union had held its local executive elections. A slate of candidates was elected which included the persons already identified in this decision as well as the applicant himself who, at the time of the January meetings, was the recently elected vice-president of the union. Much of the applicant's theory of the case revolves around alleged animosities between the incoming executive and the National Representative, Ms. McNama who, it is alleged, favoured the outgoing executive and would have welcomed and

therefore facilitated the applicant's departure. As will become clear in the recitation of the facts, there is simply no demonstrated factual basis for this theory in the evidence before me in this case.

22. The evidence before me consists of the oral testimony of the applicant, John Konopka and Ben Medina, all of whom testified on behalf of the applicant. Cynthia Watson testified on behalf of the union. The employer chose to call no evidence although it prepared a comprehensive brief of documents, many of which were marked as exhibits in these proceedings.

23. Ultimately, the differences in the evidence of various witnesses who testified in this case are largely matters of nuance, emphasis and interpretation. There were, however, some points of conflict, notably between the evidence of the applicant and Ms. Watson. In coming to my findings of fact I have carefully considered all of the evidence before me and taken into account such factors as: the demeanour of the witnesses when giving their evidence, the clarity and consistency of that evidence when tested in cross-examination, the witnesses' ability to recall events and resist the tug of self-interest in shaping their answers, and what seems most probable in all the circumstances.

24. To the fairly limited extent it has been necessary for me to prefer the evidence of one witness over that of another, I have, without hesitation, found Ms. Watson's evidence to be the more reliable. For not only was I left with the impression that the applicant and Mr. Konopka were intent on perpetuating their blood feud with Ms. McNama and taking every perceived opportunity to vilify her, I also found points in their evidence which were so improbable as to be incapable of any credence whatsoever. For example, at one point the applicant asserted that Ms. Watson led him to understand that if the board of arbitration proceeded (in the absence of the union and the grievor) and effected the applicant's termination, that termination would be of no force or effect because the applicant and the union had withdrawn from the arbitration proceedings and, in fact, the applicant would not be terminated unless and until the Ontario Labour Relations Board said so.

25. I need not and do not ascribe any malice or prevarication to the applicant in presenting this view of Ms. Watson's advice. It is more likely that he is merely demonstrating his lack of sophisticated understanding of certain legal processes and their interaction one with another. But, after hearing all of the evidence, it is inconceivable to me that Ms. Watson would ever have advised the applicant that the union's non-appearance at the arbitration hearing would render the arbitration award null and void. Again, while I ascribe no unsavoury motives to the applicant, his obviously incomplete and somewhat fractured understanding of some of the legal issues and strategies discussed at the January meetings serves, to some extent and particularly where that understanding is inconsistent with the evidence of Ms. Watson, to undermine his credibility more generally or to at least weaken the general reliability of his evidence.

26. This brings me to a slightly more detailed description of the January meetings. As already adverted to, these meetings consisted of up to 15 hours of discussion related to the applicant's imminent arbitration hearing. It was, of course, impossible for any participant to provide an exhaustive replay of all of the words uttered over the course of those many hours of exchange. Indeed, for our purposes, it is not necessary to attempt to reconstruct all of the substance and nuances of all the discussion which took place. Again, the broad parameters of the content, process and progress of those meetings will be sufficient for our purposes.

27. The meetings were designed and commenced for the purpose of preparing for the upcoming arbitration hearing. The focus of these meetings shifted quite quickly and at the instance of the applicant. Before describing that shift, it is useful for me to address an issue adverted to by the applicant from time to time during the hearing.



28. It was suggested that the union was ill prepared to proceed with the arbitration hearing. It was even suggested that to wait until a week prior to the scheduled hearing to meet with counsel was, on its face, inadequate. Indeed, in final argument, the applicant's representative suggested that the lack of preparation on the part of the union was, in itself, capable of being characterized as an independent breach of the union's duty of fair representation. For a number of reasons, this submission has a kind of "Alice in Wonderland" texture. First of all, this argument is not a proper part of the case as pleaded (even if it was at one time, it certainly no longer is in view of the limitations on the application resulting from my previous award in this matter). Even if this were a legitimate area to pursue, I have little doubt that there could easily be generalized panic in the labour relations community (particularly in its legal corners) at the preposterous generalized suggestion that preparing for an arbitration case a week in advance is improvident. Further, and in the specific facts of this case, I am satisfied that there was more than enough time to prepare to go to arbitration had that been the course selected by the applicant.

29. There is, however, a further deficiency to this argument which has wider application in the case. The applicant complains of the treatment he received at the hands of his union. It is not without irony that one is forced to note that the individuals who, at the relevant time, had and exercised the authority to act on behalf the union were the three individuals who testified on behalf (and clearly continued to be supportive) of the applicant plus Christine Jankowski, the president of the union, who did not testify in these proceedings. There was no significant evidence of conflict or disagreement between the applicant's witnesses and Ms. Jankowski regarding how to proceed and the decisions taken at the January meetings. Thus, one is left in this case with the peculiar sensation that the applicant is now complaining about the decisions he himself (along with other union executive members) took regarding his own case. A simple manifestation of that sensation arises in the context of now complaining that preparation for arbitration was left too late. If the applicant *qua* applicant felt that early preparation for the arbitration case was warranted, then why did not the applicant *qua* vice-president of the union simply set up an earlier meeting?

30. In any event, little time was spent actually preparing for the arbitration case. That was because very early on in the discussions, the applicant made it clear that he felt he had little chance of success at arbitration and that there would be greater prospects of success at this Board pursuing the deferred unfair labour practice proceedings against the hospital. Indeed, the applicant was ultimately able to persuade the other members of the union executive (at least one of whom needed convincing) that they should not participate in the arbitration proceedings. There is no doubt in my mind that but for the applicant's successful initiative to boycott the proceedings, the union was ready willing and able (and had sufficient time for its final preparation) to participate in the arbitration proceedings.

31. Further, there is equally no doubt in my mind that the applicant was advised by both Mr. Sheehan (who was counsel to the union in the instant matter) and Ms. Watson that his chances of success (though never presented as strong) were better at arbitration than at the Board (I should note here that this is one of a number of instances where the applicant's testimony is at odds with not only that of Ms. Watson but that of his own witnesses). Ms. Watson explained to him that unless it was satisfied that the hospital had exhibited some anti-union animus, the Board, unlike the arbitrator, was unlikely to focus on whether there was just cause or the appropriateness of the penalty assessed. The applicant, however, was steadfast in his view that he could not and would not get a fair hearing at arbitration. His consequent position that the union should therefore not participate in that process ultimately prevailed.

32. But the decision to not participate in the arbitration hearing raised a number of consequent issues. First of all, and as the applicant demonstrated he understood very well, some form of closure had to be brought to the arbitration proceedings before any hearing at the Board would commence. But it was also made clear to the applicant that if the union simply did not show up, the arbitration hearing

would likely merely proceed in their absence and result in the applicant's unopposed termination from employment.

33. It was in this context that the participants hit upon a "scheme" to put the best face on things. The union would take the position that the board of arbitration had lost jurisdiction. Ms. Watson suggested that the "hook" to hang that assertion on was the board's issuance of a decision signed by a member who did not participate at the hearing. The applicant's unfair labour practice complaint could then proceed with the applicant taking the position that the board of arbitration was without jurisdiction to do whatever it may have done (including approving the applicant's termination). It was, however, absolutely clear during these discussions that whatever public position the union took regarding the board of arbitration, there was no intention whatsoever of pursuing an application for judicial review. On the contrary, all of the participants in the January meetings knew and understood that there would be no such application pursued. Even the applicant, despite his periodic inconsistent testimony on the point, acknowledged that there was to be merely a "threat" of commencing judicial review proceedings. Mr. Konopka described it as a "bluff" designed to "pull the wool over the eyes" of the arbitrator. In other words, contrary to the applicant's pleadings (which I had accepted as true and provable for the purposes of my preliminary decision in this matter), there was never any agreement, undertaking or assurance on the part of the union that judicial review proceedings would be commenced in earnest.

34. Although it is unnecessary for me to dwell on the point, Ms. Watson provided the rationale for not proceeding to judicial review - in her view, a view which is not only reasonable but, in all likelihood correct, the chances of success were extremely limited. While the issuance of an award signed by a panel member who did not participate at the hearing is certainly unusual and more than likely inappropriate, the fact of the matter is that both the union and the applicant specifically consented to proceeding with the last minute substitution. Further, even if the resulting two sentence decision could be impugned, it is in the nature of a procedural ruling with little, if any, impact on any substantive rights. Finally, to the extent that complaints had been sounded regarding comments made by the arbitrator during the course of the hearings, Ms. Watson also clarified that many of those comments were made during the course of efforts to mediate a resolution and that to the extent pressure may have been applied, it was not applied to only the applicant.

35. As a result of the discussions and resolution of the January meetings, Ms. Watson forwarded a letter to the board of arbitration. A portion of that letter has already been reproduced; the entire text reads as follows:

As you are aware, we represent the Union on behalf of the Grievor with respect to the above-noted matter. This serves to advise that the Grievor is firmly of the view that this Board has lost jurisdiction to hear this matter given its improper conduct of the hearing to date. The Grievor feels that there has been a denial of natural justice and that it would be impossible to receive a fair hearing from the Board as constituted. Specifically, at the last scheduled hearing date the Employer nominee did not show for the hearing. There was no notice to the Union that he would not be available. Accordingly, a lawyer in the building where the hearing was taking place was asked to sit in, thereby changing the composition of the Board seized in this matter. Even more concerning, however, is that the award of the Board with respect to the matters dealt with that day was signed by Wm. Charlton, the original Employer nominee, notwithstanding that Mr. Charlton did not even attend the hearing! The fact that the Board signed an award with a nominee signing as a representative when he did not even attend the hearing goes to the very integrity of the Board.

Further, Arbitrator Teplitsky stated to the Grievor on the first day of hearing, prior to hearing any evidence as argument, that he believed the Grievor was a troublemaker and would be better to seriously consider a cash settlement. Later in the process, Arbitrator Teplitsky suggested that the grievor should agree to abstain from any involvement in Union activities. Given that the Board was aware that the grievor had an Application outstanding alleging discrimination based in part on anti-union animus, such sentiment by the Arbitrator was considered highly inappropriate and prejudicial.

As a result, the Grievor has requested that we withdraw from proceeding before this Board on the basis that the Board has lost jurisdiction. Given that justice must not only be done but be seen to be done the Union accedes to the Grievor's request. Accordingly, we will not be participating in the hearing dates set for January 17 and 18, 1995 insofar as we take the position that the Board has committed a breach of natural justice and has lost jurisdiction over this matter.

36. I am satisfied that this letter fully accords with and accurately reflects the agreements and understandings of the participants at the January meetings. The applicant testified that he was disappointed in the letter because it does not explicitly mention judicial review. It is clear, however, that the letter is drafted in such a way that the seasoned reader, such as counsel, an arbitrator, a court or this Board, would undoubtedly understand that the union was clearly expressing its view that the board of arbitration had committed reviewable error.

37. Not long after the applicant indicated his desire, which had become a decision of the local executive, to not appear at or participate further in the arbitration, Ms. Watson advised him that he would be required to sign a release to that effect. Ultimately and at the conclusion of the January meetings, the applicant executed the following document:

**IN THE MATTER OF PROCEEDINGS WITH RESPECT TO THE DISCIPLINE AND  
TERMINATION OF JOHN DEMETRIADES**

**ACKNOWLEDGEMENT AND RELEASE**

**WHEREAS CERTAIN** discipline was issued against myself, John Demetriades, and whereas I was ultimately terminated from my employment at St. Joseph's Health Centre;

**AND WHEREAS** grievances were filed on my behalf by the Union;

**AND WHEREAS** such grievances were processed through to arbitration;

**AND WHEREAS** arbitration was commenced before a Board comprised of Arbitrator Teplitsky, and side persons J. White and Wm. Charlton;

**AND WHEREAS** the arbitration was scheduled to reconvene Tuesday January 17 and Wednesday January 18, 1995;

**AND WHEREAS** the Union was prepared to proceed to arbitration on my behalf as scheduled to have this case heard on the merits;

**AND WHEREAS** I, John Demetriades, currently have a proceeding before the Ontario Labour Relations Board held in abeyance;

NOW therefore I confirm the following:

1. I confirm that notwithstanding that the Union was prepared to proceed to arbitration on my behalf as scheduled to have this case heard on the merits, I requested that the union withdraw from the proceedings before arbitrator Teplitsky with respect to this matter. Specifically, I requested that the union indicate that we would not be prepared to participate in the hearing scheduled for January 17 and 18, 1995 insofar as it is my view that I would not receive a fair hearing before this board in this matter.
2. I reached the above-noted decision on my own, under no duress, after having had the opportunity to consider the options and to receive independent advice if I so chose.
3. I reached the above-noted decision notwithstanding advice to the contrary from the union and its counsel. Specifically, I was advised of the risk of withdrawing from the proceeding i.e. that the Hospital may argue that I have voluntarily withdrawn from the process and therefore forego my right to have this matter heard. Further, I am aware that withdrawing from the arbitration process leaves me to argue the unfair labour practice element of this



matter. In other words, if I am unsuccessful in convincing the Board that the employer's actions in this case were partly motivated by anti-union animus or reprisals I would have lost the opportunity to have my case heard on the merits. I have been advised by counsel that my best chance in this matter is to have my case heard on the merits at arbitration.

4. Notwithstanding my concerns of the conduct of the hearing on the part of arbitrator Teplitsky and the Board, I hereby confirm that I received full and fair representation by the Union and its counsel throughout this matter.
5. I am withdrawing from the arbitration process with the knowledge that I would be responsible to pursue my proceeding before the Ontario Labour Relations Board at my own cost and with my own representation. However the Local will assume the cost of 1/2 day preparation time to allow Cynthia D. Watson to prepare my interim application at the Board.
6. I further confirm that I release the Union and its counsel from any and all claims, demands, or causes of action of every nature in anyway related to my employment or the termination of my employment and of antrum [sic] all claims which I may have by reason of matters prior to the date hereof.

DATED in Toronto this 16th day of January, 1995.

"John Demetriades"  
JOHN DEMETRIADES

WITNESS:                   "John Konopka"  
JOHN KONOPKA

38. The contents of this release were altered somewhat from the original document which Ms. Watson had prepared. In particular and in response to the applicant's request, the last sentence of paragraph 5 was added to provide some financial support from the union with respect to the preparation of an application for interim relief. On its face, this release would seem to provide a full and complete answer to the applicant's complaint. The applicant asserts, however, that he was subjected to undue duress in being required to sign the document. Although there are some interesting aspects associated with the signing of this release, the evidence simply does not support the applicant's claim.

39. Before outlining very briefly some of the dynamics leading to the execution of the release, it is useful to return to a theme sounded earlier by pointing to an altogether different piece of the applicant's evidence. In cross-examination, union counsel suggested to the applicant that he had attended a union meeting in January or February of 1995 (presumably after signing the release and the consequent issuance of the arbitration award confirming his discharge) and had responded in the negative when asked if he intended to file a duty of fair representation complaint against the union. In response to that suggestion the applicant acknowledged that there might have been a question like that and that his answer would have been "no" because, as he put it, "my problem was with the regional office not the local". This response provides a useful key to what these proceedings really are about. As noted earlier, the applicant's complaint can be characterized as one in which the impugned conduct is his own, at least insofar as he was a member of the executive which took the decisions complained of. And while the applicant, by his own admission, may have no complaint with the local, it is the local i.e. Local 1144 and *neither* the regional *nor* the national office of the Canadian Union of Public Employees which is the responding party in this case. Indeed, as the relevant and exclusive bargaining agent, only Local 1144 can be found to have violated the statutory duty of fair representation.

40. Despite this, it was clear throughout these proceedings that the applicant's complaint related to the conduct of Ms. McNama, the representative of the union's national office and, to a lesser extent, Ms. Watson. Thus, while there is no doubt that both Ms. McNama and Ms. Watson played significant roles in the January meetings, it is less than obvious that their conduct, even if it were found to be inappropriate (and I do not do so) could result in a finding that the union had violated its duty of fair

representation. It may, however, be helpful to describe just a little more fully the role that Ms. McNama and Ms. Watson played, particularly in relation to the execution of the release.

41. First of all, it must be recalled that the union executive participating in the January meetings was newly elected and relatively inexperienced. Both Ms. McNama and Ms. Watson provided advice and continuity as each had been involved in the local's affairs even prior to the election and had, in particular, been involved in matters pertaining to the applicant's arbitration proceedings. Most of the witnesses agreed that Ms. Jankowski, the newly elected president of the union sought out, listened to, considered and frequently accepted the advice of Ms. McNama. Indeed, it would appear that from the applicant's perspective, she was too deferential to Ms. McNama.

42. I am prepared to accept that the very idea of executing a release originated with Ms. Watson and/or Ms. McNama. In principle the signing of such a release appears to be a prudent and sensible move. Indeed, it could easily be suggested that any union contemplating (in the absence of a settlement) simply not turning up for a scheduled arbitration hearing and instructing its counsel to do the same would be negligent to do so without the express written agreement of the affected grievor, particularly where the non-attendance is at the grievor's own insistence.

43. The applicant's assertion was that Ms. McNama threatened that if the applicant did not sign the release the union would proceed to arbitration. The applicant was of the view that the union was unprepared for arbitration and the threat therefore implicitly became one of going to arbitration unprepared. I have already indicated that the applicant's concerns about the state of the union's preparations for the arbitration case were generally exaggerated and unfounded. But that is not really relevant - for it is simply difficult to understand how or why the applicant felt or now claims that he felt coerced into signing the release. Put somewhat differently, it is difficult to comprehend why the applicant *qua* grievor did not simply refuse to sign the release. Further, to the extent he now argues that he feared the union would then have proceeded to arbitration unprepared, it is difficult to understand why the applicant *qua* union Vice-President did not instruct counsel or engage the union executive in a discussion aimed at instructing counsel to withdraw from the arbitration proceedings rather than attend. Again, the applicant was the vice-president of the local at the time; he was accompanied by Messrs. Konopka and Medina who supported him then and continued to support him at the hearing. There is no significant evidence of any dispute or disagreement between those three executive members and Ms. Jankowski either generally at the January meetings or with specific reference to the necessity for executing the release. Thus, I can only conclude that whatever the origin of the idea of the release, the need to have it signed was essentially something about which all the participants came to an implicit general consensus. Were it otherwise, one would have simply expected it to have been a matter of discussion among the executive and for different instructions to perhaps have been given to counsel. That did not happen.

44. I have dealt with and adverted to a number of matters which are not really central to the disposition of this case, largely because they occupied some significant portion of the time devoted to the hearing in this matter. But essentially, the disposition of this case is quite simple and straightforward. The only issue which has remained is whether the union violated its duty of fair representation in failing to advance the applicant's case to judicial review. Part of the reason why that issue survived the preliminary objections was because the applicant pleaded that the union had made an explicit promise to commence an application for judicial review. The evidence does not bear out that assertion. On the contrary, I am satisfied that all of the participants at the January meeting understood and agreed that any mention of judicial review was to be a ruse and that in no circumstances would the union actually proceed with such an application. Further, I am satisfied (to the extent it is even necessary for me to consider the question) that the decision taken at the January meetings to not proceed to judicial review was reasonable and neither arbitrary, discriminatory nor in bad-faith.

45. In his inimitable style, the applicant's representative advanced a new argument at the conclusion of the case. He asserted that the decision to not commence judicial review proceedings had been made prematurely or ought, at least, to have been re-examined after the final arbitration award was issued. While there is some initial attractiveness to this submission, not much scrutiny is required to reveal its ultimate lack of persuasive force. I have already concluded that the decision made to not judicially review the decisions of the board of arbitration before its final hearing and award was reasonable. Does it suddenly become any less reasonable to come to the same conclusion after the final hearing and award? I think not. All that had been added to the pre-existing layer of events was that a further hearing had been held in which the union had failed to participate knowing full well the potential consequences of its lack of participation. Neither does the fact that the arbitrator may have allowed the employer to rely on further particulars which may have been excluded had the union participated add anything significant to the mix. I simply do not see the fact that the arbitration proceeded in the union's absence as adding anything of significance to any application for judicial review.

46. The real description of this case has perhaps little to do with the duty of fair representation. The applicant was successful in convincing all concerned to adopt the unconventional strategy that he favoured. That strategy failed. The applicant now seeks to blame someone else for that failure. He cannot.

47. This application is dismissed.

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**2660-94-R** Labourers' International Union of North America Local 1089 (the "Labourers"), Applicant v. 533670 Ontario Limited c.o.b. as Best Personnel Services ("Best") and **Esso Imperial Oil Limited** ("Esso"), Responding Parties

**Certification - Construction Industry - Employer - Board finding that employees affected by application for certification employed by respondent and not by personnel agency**

**BEFORE:** *G. T. Surdykowski*, Vice-Chair.

**APPEARANCES:** *John Moszynski* and *Robert Leone* for the applicant; *Peter Chauvin*, *Don Callum* and *Carol Kameka* for 533670 Ontario Limited c.o.b. as Best Personnel Services; *James B. Noonan*, *W.J. Dalziel*, *N.C. Draper*, *A.J. Wiggins* and *Karen M. Sargeant* for Esso Imperial Oil Limited.

**DECISION OF THE BOARD;** October 7, 1997

1. This is an application for certification. It was made on October 21, 1994, under the construction industry provisions of the then (Bill 40) *Labour Relations Act*. More than a year later, on November 10, 1995 the current (Bill 7) Act was given Royal Assent.

2. The current Act is Schedule "A" to Bill 7. Section 3 of Bill 7 (as opposed to Schedule "A" of the current Act) is part of the transitional provisions which apply to the Act. It provides that:

3. (1) This section applies with respect to proceedings commenced under the old Act in which a final decision has not been issued on the day on which this section comes into force.

(2) A proceeding continuing after the new Act comes into force shall be decided as if the new Act had been in force at all material times. The presiding person or body shall apply the substantive provisions of the new Act as the procedural rules established under it.



• • •

(4) Despite subsection (2), in a proceeding relating to an application for certification of a trade union as a bargaining agent, the presiding person or body shall apply sections 5, 8, 9 and 9.1 of the old Act and not sections 7, 8 and 10 of the new Act. This subsection applies only with respect to applications for certification made before October 4, 1995.

• • •

3. The transitional provisions did not directly address applications for certification made under the construction industry provisions of the Act. However, it is apparent that the Legislature intended that the appropriate Bill 40 Act provisions apply to applications for certification made before October 4, 1995. It has never been suggested otherwise by any party in this case.

4. The first issue to be determined in this application, and the issue with which this decision is concerned, is: who was the employer of the employees who are the subject of this application? Esso says that Best was. Best and the Labourers both say that Esso was.

5. I note that notwithstanding that the application was filed on October 21, 1994, and that representation proceedings generally proceed expeditiously, the hearings did not begin until late May 1997 (and ended on October 1, 1997). The delay was a result of attempts by the parties to arrive at a mutually satisfactory resolution of the matters in issue between them, both with and without the assistance of the Board. Although these efforts bore no fruit in the result, all indications are that the efforts were *bona fide*. The fact that the evidence, although somewhat stale, seems quite well preserved, indicates the amount of attention the parties paid to the matter during the intervening period. The fact of the delay is, in the circumstances, irrelevant to the question of “who was the employer”.

6. In argument, Esso asserted that prior to this application, there was no dispute between it and Best that Best was the employer of the employees in question, and that Best has taken a different position in this application because it wishes to avoid a trade union. Best’s rejoinder was that it is Esso which is trying to avoid a trade union.

7. It is not particularly surprising that an employer entity, which both Esso and Best are, would prefer to operate without a trade union. That is true of most employers. Further, notwithstanding Esso’s assertion that it deals with trade unions properly in those of its operations where its employees have opted to be represented by a trade union (which are relatively few in number), I consider Esso’s suggestion that its position on the “who was the employer” issue has nothing to do with a desire to avoid (or a preference not to deal with) a trade union to be somewhat disingenuous).

8. But so what? It is not surprising that an employer, particularly a large and successful enterprise like Esso which has operated for many years without much of a trade union’s presence (and none in Sarnia), would prefer to continue to operate without any, or any additional, trade union presence. There is nothing in the *Labour Relations Act* which requires an employer to desire a trade union collective bargaining partner, or that it be happy about the prospect of dealing with a trade union. On the contrary, an employer is free to be unhappy about it, to express its views in that respect (within the limits of section 70), and to oppose a trade union’s attempts to organize its employees, either in proceedings at the Board or otherwise, so long as it does nothing which improperly interferes with employees’ or trade unions’ rights under the Act.

9. Another theme developed by Esso was that the Labourers is trying to capture the “big fish” (i.e. Esso), and that it is attempting to do so by coming through “a back door which Esso unfortunately left unlocked”, something which the Labourers candidly acknowledges. So what? In the circumstances of this case, there is nothing which suggest that the “back door” is any less a legitimate entry way to

bargaining rights than the “front door”, wherever that is. Nor is it the least bit surprising that the Labourers would prefer to have bargaining rights with “big fish” Esso rather than, with great respect to it, “small fish” Best. There was no suggestion that the Labourers has done anything unlawful. (And Esso’s characterization of the “back door” as having been “unfortunately” left unlocked belies its assertion that it does not seek to avoid a trade union.)

10. In the absence of an unfair labour practice complaint (and there is none in this case), the motivation of any of the parties is irrelevant to the matters in issue in an application for certification. This is particularly true of a “who is the employer” issue. Equally irrelevant (as Esso submitted in its opening statement) is whether the employees in question are unionized when the question is asked. That is, the answer to the question should not be different because the employees are not represented by a trade union.

11. Counsel referred to the following cases in argument: *Templet Services*, [1974] OLRB Rep. Sept. 606; *York Condominium Corporation*, [1977] OLRB Rep. Oct. 645; *The Tower Company (1961) Ltd.*, [1979] OLRB Rep. June 583; *Sutton Place Hotel*, [1980] OLRB Rep. Oct. 1538; *Re Ford Motor Co. and Plant Guard Workers*, (1981) 1 L.A.C. (3d) 141 (MacDowell); *K-Mart Canada Limited*, [1983] OLRB Rep. May 649; *Re Royal Ontario Museum and Service Employees*, (1984) 16 L.A.C. (3d) 1 (Adams); *Sylvania Lighting Services*, [1985] OLRB Rep. June 1173; *Travelers Motor Inn*, [1988] OLRB Rep. Feb. 206; *Nichirin Inc.*, [1991] OLRB Rep. Jan. 78; *Provincial Store Fixtures*, [unreported OLRB decision dated March 30, 1993, File No. 1306-92-R]; *Dare Personnel Inc.*, [1995] OLRB Rep. July 935. There are many more decisions in the Board’s jurisprudence which deal with “who is the employer” issues, but the selection referred to by the parties is representative of the evolution of the approach which the Board and arbitrators have taken to the question, both generally and specifically in “personnel agency” cases.

12. Although the Board is always prepared to consider any factor which is relevant, as a general matter, the factors which the Board has considered when faced with a “who is the employer” issue are the ones first compiled in the *York Condominium*, *supra*, decision:

- (1) who exercises direction and control over the employees when they are performing the work;
- (2) who bears the burden of remuneration;
- (3) who has the power to impose discipline;
- (4) who does the hiring;
- (5) who has the authority to discharge;
- (6) who do the employees perceive to be their employer;
- (7) the intention to create an employment relationship.

13. None of these factors is necessarily determinative, and the relative significance of any individual factor will depend on the circumstances of the particular case. Having said that, it is apparent that the object of the exercise is to assess the various factors, both individually and in the context of all the other factors, in order to ascertain who has fundamental control over the employment relationship, particularly where the factors point in different directions. In making the assessment and determination, the Board is more concerned with substance than with form; that is, the Board will not permit commercial form to obscure labour relations reality.

14. A natural consequence of this is that the first five factors listed in *York Condominium, supra*, which are indicators of control, have become more important than the last two, which are both more subjective and difficult to gauge. This is consistent with the Board's preference (and the underlying theme of the Act as demonstrated by provisions like subsection 1(4) and section 69) for substance over form, and with the principle that perception and impression cannot be determinative of a question of law (see, *International Union of Canada and Kent Line Ltd.*, (1972) 27 D.L.R. (3d) 105 (Federal Court of Appeal)).

15. When it comes to a question of fundamental control, there is little which is more important than beginning the relationship (hiring), regulating it (direction, control and supervision) and ending it (termination). Accordingly, *York Condominium, supra*, factors 1, 4 and 5 have gained primacy. Indeed, even though the Board (and arbitrators) have been careful to say that it will not necessarily be determinative, decisions like *Dare Personnel, supra*, *Sylvania Lighting, supra*, and *Royal Ontario Museum, supra*, demonstrate that direction and control is a very significant factor. At the same time, these decisions also demonstrate that the perception of the employees, and commercial contracts as indicators of intention often carry little weight.

16. The cases involving personnel agencies suggest that persons who are referred to work for a company will generally be considered to be employees of that company, and not of the personnel agency. The decision in *Templet Services, supra*, indicates that this will not always be the case, but standing virtually alone as it does, it also demonstrates that the contrary result (i.e. that the personnel agency is the employer) is an uncommon exception.

17. Is there anything to distinguish this case from the cases in which the "customer" company and not the personnel agency has been found to be the employer? In my view, there is not. Indeed, the facts in this case are rather reminiscent of *Ralston Purina Canada Inc.*, [1979] OLRB Rep. June 552.

18. There appeared to be some disagreement between the parties regarding the evidence which the Board should give weight to in considering the question in issue. I prefer the broader approach suggested by Best and the Labourers. The fact that the issue is who was the employer at the time the application was made does not mean that evidence of what occurred at other times is not relevant, to the extent that such evidence sheds light on what the situation was at the material times.

19. In this case, Esso concedes (and the evidence clearly establishes) that Esso directed and controlled the employees in question. To the extent that there is distinction between direction and supervision, Esso also supervised them. *York Condominium, supra*, factor 1 therefore points to Esso as the employer.

20. Although I have no evidence before me which suggests that the manner in which the employees in question were paid is typical of how employees referred to work by an employment agency are paid, the jurisprudence suggests that it is at least not uncommon. In this case, the employees tracked their own hours on forms supplied and verified by Esso, dropped off these forms at Best weekly, and received a weekly paycheque from Best. Best made all of the usual employment deductions and employer payments for income tax, unemployment insurance, Canada Pension Plan, and workers' compensation purposes, and it was Best which issued income tax T-4 slips and records of employment to the employees. However, all of this was done pursuant to the agreement between Esso and Best in that respect, and all of it was charged back to Esso, along with a commission for "overhead" (which included Best's profit) of 13 or 15 percent (depending on whether Best performed a recruitment function for the particular employee). In the circumstances of this case, I am satisfied that when it came to paying the employees, Best performed a payroll function, and that the "burden or remuneration" was on Esso.



21. The evidence suggests that if all that Esso had wanted was someone to perform a payroll function, it could have had a chartered bank provide one at a much lower rate. Perhaps, but it didn't. Further, although Best performed a payroll function, that is not all it did. First, as the two different "commission" rates indicate, Best also performed a recruitment function as required. Banks do not do this. Second, Esso used Best as an administrative layer to supplement its "valley staffing" strategy. That is, Esso used employees referred to it by Best to supplement its regular work force, on a regular and predictable basis, as required. The employees referred by Best were paid at lower wage rates, and had no access to the seniority or other benefits which direct Esso employees received. Accordingly, it is far from obvious that Esso could have obtained what it received from Best from some other "payroll service" more cheaply or at all. Third, although the wage rates paid to employees provided by Best were established in Esso's contract with Best, it is apparent that Esso dictated those rates. Best charged back the wages to Esso in their entirety, and had little interest in what they were. This is in contrast with contractors which may be engaged by Esso to perform work. Whether these contractors operate on a cost plus or fixed price contract, and whether they provide labour and materials or labour only, Esso has no say in what wages or benefits the contractors' employees will be paid, whether or not the contractors are bound by a collective agreement. Finally, the fact that it was Best which made the various employment "source deductions" and employer contributions and may be the "employer" for income tax or other purposes, is neither determinative, nor particularly enlightening when one is trying to separate form from substance. (Indeed, it is far from clear that Esso would not be considered to be the accident employer of employees referred to it by Best for workers' compensation purposes.)

22. I am satisfied that *York Condominium, supra*, factor 2 points to Esso as being the employer.

23. I am also satisfied that Esso had an exercised power to discipline employees referred to it by Best. This is apparent from Brian Aitken's testimony concerning his relationship and interaction with his Esso supervisors, and from the evidence concerning the counselling, direct warnings and termination of Pat MacMillan, Best referral, by Esso. There is no evidence which suggests that Best had or ever attempted to exercise any disciplinary power, or that it was asked by Esso to do so. Indeed, Best had no supervisory staff either at Esso, or assigned to the employees it referred to Esso, and Best had no knowledge of what the employees were doing at Esso, other than as revealed by the Esso time sheets it used to produce a payroll.

24. Similarly, it is apparent that Esso determined when the employment relationship would begin and end, either temporarily or permanently.

25. Sometimes, Best did perform a recruitment function for Esso. Upon being asked by Esso to do so, Best would refer persons it considered to be qualified to perform the work required to Esso. However, it is clear that Esso was free to accept or reject anyone who Best referred, and that no one was actually "hired" until Esso expressly or implicitly accepted them as employees.

26. However, Esso often played a much more directory role regarding the referral of employees by Best. For example, in early 1994, Best lost its contract with Esso to another personnel agency ("S.O.S."). When that happened, the employees who Best had referred to Esso and who were still working there were "transferred" from Best's payroll to S.O.S.'s payroll. Several months later, in early April, 1994, Best re-acquired the contract it had lost to S.O.S. and was directed by Esso to put people on its payroll, including six employees who had been "transferred" to S.O.S. earlier, and three who had been direct Esso (temporary) employees. It is apparent that Best had no say in any of this. It is also apparent that none of this had any affect of any substance on the six employees who were transferred for payroll purposes from Best to S.O.S. and back to Best again. They continued to work at Esso under the same terms and conditions throughout. On another occasion, in May, 1994, Esso supervisors directed Best to "hire" several people, who it turned out were relatives of direct Esso employees.

Apparently, this is contrary to an internal Esso policy, and when it was discovered Esso directed Best to remove these persons from the payroll. That is, they were terminated.

27. When employees who Best had referred were laid off, as they sometimes were, they were laid off directly by Esso. Best played no role in any lay-off decision. Indeed, its only role was to do the requisite payroll work, including issuing a record of employment as required. Similarly, when these employees were recalled to work, as often as not it was done directly by Esso, and Best was advised, generally by the employee concerned, that he had been recalled so that he could be reinstated on the payroll.

28. In effect, Best operated as a kind of broker or “hiring hall” in which Esso had unlimited “name hire” authority. It is clear that Esso, not Best, determined who would be hired. It is also apparent that Esso applied the internal policies which it applies to its direct employees to the employees referred by Best. Esso also completely controlled when such employees were temporarily or permanent laid off or terminated. Indeed, there is nothing which suggests that Best could have removed an employee which it had referred to Esso. In the construction industry, owners or general contractors have policies which are applied to subcontractors and their employees. However, the policies tend to be general, generally safety oriented policies, and not the kind of policy which dictates the family status of persons who a subcontractor cannot employ. Similarly, although an owner or general contractor can play a role in discipline, or can cause a subcontractor to remove an employee from the job site for cause, that is generally done through the subcontractor and not directly as Esso has done with employees who came from Best. In addition, owners and general contractors generally have nothing to say about when or who subcontractors will lay-off, both of which Esso completely controlled in this case.

29. In the result, I am satisfied that *York Condominium, supra*, factors 3, 4 and 5 point to Esso as being the employer.

30. In this case, the factor of employee perception is neutral. The evidence suggests that some employees referred by Best perceived it to be their employer, while others perceived Esso to be their employer. In either event, I do not consider this to be a significant factor in this case. *York Condominium, supra*, factor 6 therefore points to neither Best nor Esso.

31. I am satisfied that Esso did not intend to create an employment relationship with employees referred to it by Best. However, I am also satisfied that Best didn’t either. The employees involved didn’t particularly care who their employer was. All they cared about was that they were going to a job at Esso.

32. The contract between Esso and Best in this case is an example of form being inconsistent with substance. It is structured so as to make it appear that Best is a normal contractor and that Best employs the persons it refers to Esso. However, it is poorly suited to the actual situation and does not reflect the true relationship between Best, Esso and the employees. In that respect, for example, Articles 1 (Definitions), 2 (Contractors’ Representations), 3 (Work), 4 (Schedule), 5 (Subcontractors), 7 (Changes), 8 (Compensation, Invoices and Payment), 11 (Non-Lien Claims and Lien Claims), 13 (Liability and Indemnification), 14 (Insurance), 15 (Deficient Work), and 17 (Termination of Work) simply do not fit. It is apparent that these “boiler plate” provisions, which are appropriate in a true subcontractor situation, are not at all reflective of the service provided by Best. The same is true of Exhibit “A” (Compensation - All inclusive rates) to the contract, which appears to be inconsistent with the “Labour/Trades Rates” tables appended to it. Indeed, these “Labour/Trades Rates” tables appear to be the only parts of the contract which were really operative. In the context of the circumstances taken as a whole, the contract can be given no weight as an indicator of who the employer of these employees was for purposes of this application.

33. The evidence does suggest that the employees referred to Esso by Best were not treated the same as direct Esso employees. For example, the Joint Industrial Council ("JIC") Agreement was not applied to them, they didn't wear the same coveralls, didn't attend the same health and safety and other meetings, and didn't eat lunch in the same place, among other things. As the Board observed in *Nichirin Inc.*, *supra*, these things are quite peripheral to the question of who exercised fundamental employment control. Further, not all direct Esso employees are treated the same. Regular "fixed term" employees are treated differently than regular employees. For example, the JIC Agreement does not apply to them either.

34. Finally, Esso suggested that finding it to be the employer in this case would "entirely disrupt the burgeoning temporary personnel industry". It is not clear to me why that should be so, or that Esso is in a position to even make such an assertion. The party best placed to comment on that question is Best, which clearly does not share Esso's concern. In any event, the Board is obliged to interpret and apply the *Labour Relations Act*. The effect which this might have on either the immediate parties or in an industry can be a relevant consideration in some cases, but not when it comes to questions of law such as "who is the employer".

35. In the result, Esso controlled all of the fundamental aspects of the employment of the employees referred to it by Best. It controlled who would work, how long they would work, when and where they would work, what they would do, and what they would be paid. I am satisfied, on a balance of probabilities, that the employees affected by this application for certification were employed by Esso at the material times. More specifically, the answer to the question "who was the employer?" is: Esso.

36. Other issues remain to be dealt with. The hearing will continue on Tuesday, October 14, 1997, as previously scheduled, but beginning at 2:00 p.m. in the "Board Room", 6th Floor, 400 University Avenue, Toronto, Ontario.

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**1019-97-R; 1020-97-R; 1228-97-U; 1229-97-U** Canadian Health Care Workers (C.H.C.W.), Applicant v. **Grand River Hospital Corporation**, Responding Party v. London & District Service Workers' Union, Local 220; Canadian Health Care Workers (C.H.C.W.), Applicant v. **Grand River Hospital Corporation**, Responding Party v. London and District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C., Intervenor; Canadian Health Care Workers (C.H.C.W.), Applicant v. London & District Service Workers' Union, Local 220 and **Grand River Hospital Corporation**, Responding Parties

**Certification - Charges - Representation Vote - Unfair Labour Practice - Canadian Health Care Workers (CHCW) applying to displace Service Workers' Union Local 220 as bargaining agent for certain hospital workers - Board finding that allegations made by CHCW concerning conduct of Local 220 and employer could not, even if true, support finding of breach of the Act or undermine results of representation vote - Applications dismissed**

**BEFORE:** *Russell G. Goodfellow*, Vice-Chair, and Board Members *J. A. Ronson* and *H. Peacock*.

**APPEARANCES:** *Ernest D. Coetzee*, *Joe Daignault* and *Jill Webb* for the applicant; *Stephen Krashinsky*, *Andrew MacKenzie* and *Mary Kay Whitney* for the responding union; *Ted J. Kovacs* and *John Cox* for the responding employer.



**DECISION OF THE BOARD;** September 12, 1997

1. The style of cause is hereby amended to reflect the correct name of the responding party employer: "Grand River Hospital Corporation".
2. These two displacement applications for certification and two section 96 complaints came on for hearing before this panel of the Board on August 5, 1997. At the outset of the hearing, the Board heard and ruled on motions for dismissal brought by the London & District Service Workers Union, Local 220 ("Local 220") and supported by the employer. The Board ruled that the motions should succeed and that the applications should be dismissed. We indicated that we would provide brief reasons for our ruling as soon as possible. These are our reasons.
3. The Board was of the view that the allegations set out in the two section 96 complaints and in the two certification applications (as outlined more particularly at the hearing) concerning the conduct of Local 220 and the employer could not, even if proven to be true, support a finding of a breach of the Act or undermine the results of the representation votes. It was evident from the materials and submissions before the Board that the parties engaged in what counsel for Local 220 described as a "vigorous and free wheeling" campaign for employee support in the period leading up to the votes and that neither the conduct of the employer nor that of Local 220 was sufficient to compromise the integrity of that process.
4. Indeed, it appeared to the Board that the conduct which was of greatest concern to the applicant (i.e. the suggestion that employees would not receive retroactive pay previously awarded to them by an interest arbitration panel if they voted in favour of the applicant) was both ambiguous in its expression and, more importantly, was communicated in circumstances which could have no meaningful impact on the vote. The information was alleged to have been relayed in only two or three individual conversations with fellow employees by a bargaining unit member who was not an official of Local 220. Further, the conversations are alleged to have occurred at the *very* end of the campaign and, in our view, could not have amounted to much more than the proverbial "drop in the bucket" of what appeared to be a full and, at times, overly frank competition for employee support. Accordingly, and whether evaluated in isolation or together with the other conduct complained of, there was nothing in Local 220's behaviour that could have caused the Board to find that the Act had been breached or that no effect should be given to the results of representation votes held in two very large bargaining units and won by Local 220 by substantial margins.
5. Likewise, and with respect to the alleged improper conduct of the employer, we note that the employer was under no obligation to treat supporters or representatives of the applicant and Local 220 equally in the context of the applicant's organizing campaign. The employer is subject to collective agreement obligations with Local 220 and need not extend privileges which flow from those agreements to the applicant. Moreover, there was nothing in the employer's alleged conduct which amounted to an unfair labour practice or which could be said to call into question the results of the vote as a true and accurate expression of employee wishes.
6. Further, and while Board Member Ronson would have found the following to have been, in itself, a sufficient basis for dismissing the allegations and the section 96 complaints, the Board was troubled by the fact that the applicant did not raise any of its concerns prior to the counting of the ballots and the signing of the certification of conduct of election and waiver forms. At the hearing, the applicant acknowledged that all of its concerns were known to it prior to the counting of the ballots, but it did not draw these concerns to the Board's attention until the results became known. As the Board has noted on many occasions, there is a "natural skepticism" that arises when a party seeks to raise, for the

first time and only after the ballots have been counted, allegations of impropriety of which it was aware prior to the vote: see eg. *United Plastic Components Ltd.* [1984] OLRB Rep. Nov. 1636.

7. Accordingly, and for these reasons, we dismissed the section 96 complaints and the applicant's allegations in the two certification applications.

8. In the result, and on the taking of the representation votes directed by the Board, not more than fifty per cent of the ballots cast by employees in the bargaining unit were cast in favour of the applicant.

9. The Board will not consider another application for certification by the applicant as the bargaining agent of the employees in the bargaining unit until one year elapses from the date of this decision.

10. The Registrar will destroy the ballots cast in the representation votes taken in this matter following the expiration of 30 days from the date of this decision unless a statement requesting that the ballots should not be destroyed is received by the Board from one of the parties before the expiration of such 30-day period.

11. The responding party is directed to post copies of this decision immediately, adjacent to all copies of the "Notices of Vote and of Hearing" posted previously.

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**0651-97-U Canadian Union of Public Employees Local 1602, Applicant v. Haliburton, Kawartha, Pine Ridge District Health Unit, Responding Party**

**Bargaining Rights - Bargaining Unit - Duty to Bargain in Good Faith - Unfair Labour Practice - Board finding Health Unit employer in violation of its duty to bargain in good faith by bargaining to impasse the issue of proposed changes to the bargaining unit description, and by refusing to remove its proposal from the negotiating table when the parties were in a strike/lock-out position - Board directing employer to cease insisting on its bargaining unit proposal and to meet with union within 2 weeks to bargain in good faith and make every reasonable effort to effect a collective agreement**

**BEFORE:** *Gail Misra*, Vice-Chair.

**APPEARANCES:** *Brian Sheehan, J. Matasic, M. Harris, B. Free* and *Connie McGinn* for the applicant; *Ray Werry, Dr. A. Hukowich* and *Susan Bickle* for the responding party.

**DECISION OF THE BOARD;** October 1, 1997

1. This is an application filed pursuant to section 96 of the *Labour Relations Act, 1995*, claiming a breach of section 17 of the Act. The applicant ("CUPE" or the "union") has complained that it is improper for the responding party to make a proposal for a change to the bargaining unit description, and to bargain it to an impasse on that issue.

2. CUPE represents the employees of the responding party (the "Health Unit" or the "employer") in the following bargaining unit description:

## Article 1.02

This agreement shall apply to *all employees of the Employer, save and except public health nurses, registered nurses*, one administrative assistant to the Medical Officer of Health, one administrative assistant to the Director, Administrative Services, one administrative assistant to the Director, Home Care Program, one secretary to the Medical Officer of Health and the Director, Administrative Services, Chief Public Health Inspectors and persons above the rank of Chief Public Health Inspector, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period.

(emphasis added)

3. There is no substantive dispute between the parties about the facts of this case, which are outlined below.

4. As a result of the impact of the *Social Contract Act*, the collective agreement between the parties expired on March 31, 1996. Bargaining began in September 1996. In October 1996 the employer requested the appointment of a Conciliation Officer, and after several meetings with the Officer, the parties were still unable to reach an agreement. At the employer's request, a "No Board" report was issued on March 19, 1997, and the parties have been in a strike or lockout position since April 5, 1997. Following a negotiation session on April 14, 1997, a number of issues were resolved with the assistance of a Ministry of Labour mediator. The only issue in dispute remained an employer proposal regarding hours of work.

5. In September 1996 the employer's proposal for changes to the collective agreement included an amendment to Article 1.02 to add the following emphasized portion, which CUPE was not opposed to adding, but which it is unclear whether the parties ever resolved:

This agreement shall apply to all employees of the Employer, save and except *all nurses registered with the College of Nurses of Ontario, working in a nursing capacity, ...*

6. The Health Unit also had a collective agreement with the Ontario Nurses Association ("ONA"), for "all registered and graduate nurses" employed by the employer (Article 2.01). As that collective agreement was also subject to the *Social Contract Act*, it too had been open for negotiation since March 31, 1996. On May 6, 1997 the Health Unit and ONA reached an agreement wherein the parties agreed to amend the bargaining unit description as follows:

The Employer recognizes the Ontario Nurses Association as the sole collective bargaining agent for *all registrants of the College of Nurses employed by the Board of Health of the Haliburton, Kawartha, Pine Ridge District Health Unit, save and except Supervisors and persons above the rank of Supervisors.*

7. The Health Unit and ONA also agreed that the employer would maintain a bargaining unit complement of at least 16 full-time equivalents which must include at least ten full-time positions, and that the employer could not reassign to persons outside the bargaining unit work performed by the members of the ONA bargaining unit if it causes or results from the layoff of members of ONA (Article 11.07). There is no dispute that the effect of this change is to allow the Health Unit to replace registered nurses with registered practical nurses, who would now be covered by the ONA collective agreement.

8. On May 9, 1997 the Health Unit met with CUPE and made a new demand to amend Article 1.02, the bargaining unit description in the CUPE agreement, as follows:

This agreement shall apply to all employees of the Employer, save and except *all registrants of the College of Nurses, ...*



The remainder of the clause would continue as before. The Health Unit was seeking this amendment as a result of the agreement it had reached with ONA.

9. CUPE has taken the position all along, with the employer, and at this hearing, that *it* should be representing any registered practical nurses (“RPN”) that the employer hires in the future as it has an “all employee” unit with specified exceptions, one of which is not RPNs. The employer has indicated it will not sign a collective agreement without the amendment, and CUPE has said changes to the bargaining unit description are not negotiable. The parties are agreed that they are at an impasse on this issue.

10. The Board heard testimony from Dr. Hukowich, the Medical Officer of Health and the Executive Officer of the Board of Health. It was his evidence that there had been cut-backs made to the funding of health units, by the provincial government. As a result, the Board of Health had decided that whatever cut-backs had to be made would be shared between all of the groups of employees, including management, union and non-union staff. By the Fall of 1996 the Health Unit knew what its cuts would be, and that is when it began to bargain with its two unionized groups.

11. The employer reached an agreement with the non-union staff that a 6% reduction in salary would be implemented, along with some unpaid vacation time. The unionized groups would not accept the same deal. The Health Unit had resolved that to cut its costs while still preserving services to the public, it would employ a lower paid category of nurses, RPNs. It would appear that a number of registered nurses (“RN”) have been laid off over the last few years, so that ONA has seen an erosion of its bargaining unit to half of what it once was. In this round of negotiations with ONA, the Health Unit was seeking to give ONA assurance that its bargaining unit would not disappear by agreeing to changes to the recognition clause in the ONA agreement. However, it would appear that there were no discussions with CUPE about the proposed change, until after the ONA agreement had been reached.

12. The CUPE bargaining unit has traditionally represented clerical personnel, public health inspectors, dental assistants and dental hygienists, a speech pathologist and some other categories of persons, but no one who did any kind of nursing work. Therefore, the employer is of the view that the change it is seeking to the CUPE bargaining unit description will not result in any loss of work to that bargaining unit.

13. In any event, the employer is of the view that there is no real difference between the wording it was originally seeking, and what it is now seeking. While it is conceded that the RPN category is a new classification to any of the bargaining units, it sees RPNs and RNs as both being “nurses” who are registered, and since RPNs are going to be hired to do the work currently done by RNs, it sees the change it is proposing as not affecting the CUPE bargaining unit. It was apparently the Health Unit’s intention not to undermine either bargaining unit.

14. The employer concedes that an RPN may be hired to work as a public health inspector, and that a public health inspector would normally have been in the CUPE bargaining unit. Further, it agrees that it would be possible that on the language in the ONA agreement, and what it is proposing for the CUPE agreement, that ONA could claim that person as belonging to its bargaining unit. The Health Unit says however that it would take the position that public health inspectors fall within the CUPE bargaining unit.

15. CUPE argues that it is improper for the employer to make the proposal for a change to the bargaining unit description, and to bargain it to an impasse. It is argued that this is especially so since the parties are in a strike or lockout position, and the main issue outstanding is the recognition clause of the collective agreement. Even if the employer is not intentionally seeking to narrow the union’s bargaining rights, the effect of the proposal is to do precisely that since the RPN classification is a new

one, and it is CUPE which has the “all employee” bargaining unit, with no exception for RPNs. CUPE argues that the issue is not what work the persons in question will do, but rather what are the specified exceptions. What the employer is seeking, it is argued, is a fundamental change to CUPE’s bargaining rights.

16. The union states that RPNs are *not* registered nurses, and it argues that ONA recognized that by seeking the amendment to *its* recognition clause such that all registrants of the College of Nurses would be covered, irrespective of the work they may do. The proposed change represents an addition to the ONA bargaining unit, and a deletion from the CUPE “all employee” unit. CUPE suggests that the Health Unit should not have bargained with another trade union over bargaining rights which CUPE holds, and it should certainly not have bargained this issue to impasse with CUPE.

17. The employer argues this is just an assignment of work issue which the employer is free to bargain over, even if the bargaining reaches an impasse. It claims the change it is seeking is simply a housekeeping one, that CUPE cannot claim that it was ever doing the work which the RPNs will be doing, and that the revised language would simply maintain the *status quo*. The Health Unit maintains that it is not seeking to avoid a jurisdictional dispute with its proposal, but is simply proposing to continue to assign ONA work to that bargaining unit, so that its proposal is therefore proper.

### DECISION

18. In the *Brantford Expositor*, [1988] OLRB Rep. July 653, the Board reiterated its previous jurisprudence with respect to negotiating changes to a bargaining unit description to impasse by stating, at paragraph 15, that:

...neither party to a collective agreement may press to impasse the definition of the bargaining unit, the extension of bargaining rights or other matters of recognition, because the concept of the definition of the bargaining unit and the recognition of its representative is fundamental to the scheme of the Act.

19. While the Board recognized that parties are entitled to raise and discuss such matters, nonetheless, at paragraph 16 it stated:

It has been emphasized in the various cases that the bargaining unit is the critical starting point of collective bargaining and the manner by which one defines the parties to the bargaining relationship. A clearly defined bargaining unit is also necessary to know the grouping of the employer’s employees in respect of which there is a duty under section [17] to bargain in good faith and make every reasonable effort to make a collective agreement. The general rule is that the parties are not allowed to insist upon demands which give rise to an illegality or to press to impasse a demand inconsistent with the scheme of the Act, which includes demands to restructure the bargaining unit.

20. In *Toronto Star Newspapers Limited*, [1979] OLRB Rep. May 451, the Board considered whether work jurisdiction and bargaining rights are synonymous, and whether a proposal to amend the scope of established bargaining rights is bargaining in bad faith. While the Board stated that an employer cannot use its economic leverage to wipe out established bargaining rights, the Board found that even though an employer may be seeking to reduce the work jurisdiction of a bargaining unit, that does not equate to a diminution in bargaining rights. This is so because although a union may have been certified to represent a particular group of employees, those bargaining rights do not, in and of themselves, give a union any particular work jurisdiction. Work jurisdiction would have to be protected through collective agreement language. Since job categories are not usually water-tight, the Board stated that competing claims of different bargaining agents for work constitute jurisdictional issues which must be addressed by the specific sections of the Act dealing with that issue. In that case the Board was of the view that there was a latent jurisdictional dispute between two unions, and stated that

there may be a breach of the duty to bargain in good faith if the employer, or the other union, made any attempts to circumvent the jurisdictional dispute procedures of the Act.

21. In the second *Toronto Star Newspapers Limited*, [1979] OLRB Rep. August 811, decision, however, the Board went further and found that the employer had breached its duty to bargain in good faith when it bargained to impasse regarding work jurisdiction issues. The Board noted that the employer had reached an agreement with another union about work jurisdiction, and thereafter made its proposal to the complaining union based on that agreement. A “No Board” report had issued, and the parties were in a legal strike or lockout position. The Board reiterated that a union does not have an absolute claim to work, nor is a work description frozen for all time, absent agreement of the parties to alter it.

22. Addressing the issue of the significance of parties being at the point where either side was legally free to resort to economic sanctions in support of their respective positions, the Board found that at that point a strike or lockout is imminent, and the employer proposal to restrict the scope of the union’s bargaining rights is in violation of section 17 of the Act. When this point is reached, an employer must modify its proposal so as not to impinge on the union’s recognized bargaining rights.

23. In considering whether parties can bargain to impasse on a matter which may become the subject of a jurisdictional dispute, the Board stated:

22. In view of the express provisions in section [99], respecting the resolution of jurisdictional disputes, are the parties free to resort to economic conflict to settle these matters, and can a party be bargaining in good faith if it presses the issue to an impasse and precipitates a strike? The answer must be no. It is inconceivable that the Act would contemplate resort to strike or lockout in support of a work assignment objective which could properly be made the subject matter of a section [99] complaint upon the actual assignment of the work. If such were the case the strike/lockout would be [a] tenuous and perhaps fruitless exercise in that the Board, on any subsequent application under the section, would be required to assess the merits and could decide the matter independently of the results achieved by use of what might have been a prolonged and costly economic struggle. ...

23. ... Similarly, the Board is of the view, having regard to the scope of section [99(1)] of the Act, that it would be consistent with the overall scheme of the Act to take a demand for work assignments which could form the subject matter of a section [99] complaint (either at the time or upon the actual assignment of work) to a bargaining impasse. The Act provides a comprehensive vehicle for resolving these multi-party disputes and hence the issue cannot form the proper subject matter of a strike or lockout within the context of bipartite negotiations. If taken to a bargaining impasse as in this case, therefore, the issue must be withdrawn from the bargaining table without prejudice to a subsequent hearing under section [99] of the Act. ...

24. In this case it is the Star which is attempting to force acceptance of an arrangement other than the status quo as embodied in the previous collective agreement and in so doing is requiring the photoengravers to possibly prejudice their position in any subsequent section [99] proceedings. ... The photoengravers have refused to voluntarily alter the existing agreement and accordingly, the Board hereby finds, in the face of a bargaining impasse, that the refusal of the Star to withdraw its demand without prejudice to whatever position it might take in any subsequent section [99] complaint, constitutes a violation of the duty contained in section [17] of the Act.

24. In my view the situation in the case before me is similar to the one facing the Board in the second *Toronto Star* case. CUPE is certified to represent all employees of the Health Unit except for specified exceptions which, for the purposes of this matter, include public health nurses and registered nurses. RPNs have only recently been contemplated by the Health Unit, and are not an excluded classification from the CUPE “all employee” bargaining unit. The Health Unit is now seeking to change the description of the CUPE bargaining unit to exclude “all registrants of the College of Nurses”, which would therefore exclude RPNs from the CUPE bargaining unit. Up until this recent round of bargaining, RPNs were not specifically included in the ONA bargaining unit either, as that union’s recognition



clause only included "all registered and graduate nurses". The current ONA collective agreement now applies to "all registrants of the College of Nurses", which would include the future hiring of RPNs.

25. It has been argued by the Health Unit that what it was seeking to negotiate was actually a work jurisdiction issue, so that the ONA bargaining unit would continue to represent those employees who would be hired to do the work which RNs have been doing. There is no dispute that whatever the characterization, the issue had been bargained to impasse. There is also no dispute that the parties are in a legal strike and lockout position.

26. On the evidence before me I find that the Health Unit is in breach of section 17 of the Act as a result of bargaining to impasse the issue of its proposed changes to the CUPE bargaining unit description, and by refusing to remove from the negotiating table this proposal when the parties are in a strike or lockout position. While I am satisfied that the Health Unit was attempting to act in good faith towards both of the bargaining agents, the implication of its proposal for the CUPE bargaining unit is a diminution of CUPE's bargaining rights. CUPE has been certified to represent all employees of the Health Unit, save and except certain exceptions. The new classification of RPN is not one of the exclusions, so that it would be open to CUPE to argue in the future that RPNs belong in its bargaining unit. By seeking, during these negotiations, to get CUPE to agree to a change to its bargaining unit description, the Health Unit would effectively make it difficult for CUPE to argue that RPNs should be represented by this union. Since CUPE is opposed to any change to the bargaining unit description, and since this is the only substantive issue remaining between the parties, the Board is of the view that this issue should now be removed from the negotiations.

27. Even on the employer's theory of the case, that this is a work assignment issue, the Board's jurisprudence is clear that a work jurisdiction issue cannot be bargained to impasse when a strike or lockout is imminent. It may well be that CUPE, ONA, and the Health Unit will find themselves dealing with this issue in the context of a jurisdictional dispute, but as the Board has found, that is the proper forum for such matters to be dealt with, not through the use of economic sanctions.

28. For all of the above reasons, the Board declares that the Health Unit, by pursuing to impasse its proposal to change the bargaining unit description, has failed to meet its obligation contained in section 17 of the Act. The Board directs the responding party to cease insisting on its proposal concerning the bargaining unit description and the work jurisdiction, and directs the Health Unit to meet with the union within two weeks of the date of this decision to bargain in good faith and to make every reasonable effort to effect a collective agreement.

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**2083-97-R; 2145-97-U; 2181-97-U IWA - Canada, Local 1-1000, Applicant v. Hawkesbury Knitting Mills, Responding Party**

**Certification - Trade Union - Trade Union Status - Board noting certain technical deficiencies in proving applicant's status exclusively on basis of grant of charter from parent union, but Board also relying on evidence regarding nature and scope of applicant's on-going activities to establish status - On going activities including collective bargaining in respect of 30 bargaining units representing 2000 members - Board finding applicant IWA-Canada, Local 1-1000 to be trade union within meaning of the Act**

**BEFORE:** *Bram Herlich*, Vice-Chair.

**APPEARANCES:** *Michael Gottheil, Rene Brixhe and Robert Hird* for the applicant; *H. P. Rolph, Daniel Beaudin and David Rinaldo* for the responding party.

**DECISION OF THE BOARD;** October 29, 1997

1. Board File 2083-97-R is an application for certification. Board Files 2145-97-U and 2181-97-U are both applications filed pursuant to section 96 alleging various violations of the *Labour Relations Act, 1995* (the "Act").
2. It appears, as a result of the applicant having twice filed the same section 96 complaint (a fax and a subsequent hard copy), that two separate Board Files were inadvertently opened in respect of the same matter. Accordingly, Board File 2181-97-U is hereby terminated on the understanding that all documents in that file (to the extent they are not already duplicated) are hereby deemed to form part of Board File 2145-97-R.
3. In the decision directing the representation vote (which has already been held) in the certification application, the Board (differently constituted) noted that the applicant had yet to establish before this Board that it is a trade union within the meaning of the Act. At the commencement of the hearing into these matters, the parties requested that the Board hear and dispose of that issue first and the Board proceeded in accordance with that request.
4. Robert Hird testified on behalf of the applicant (sometimes referred to herein as "Local 1-1000"). Mr. Hird has held the position of recording secretary of Local 1-1000 since 1992 and has been a member of that local since its inception. Prior to the creation of Local 1-1000, Mr. Hird was a member of Local 2-1000 of the International Woodworkers of America ("IWA"). Local 1-1000, we were told, is a chartered local of IWA-Canada. In or about 1987 the IWA-Canada (a then new national union) emerged out of the IWA (an existing International union). Both the IWA and IWA-Canada have previously been found by this Board to be trade unions within the meaning of the Act.
5. Under the former IWA structure, there were 5 North American regions, 2 of which were in Canada. Each local of the International was therefore assigned a numerical prefix corresponding to its geographic location within those regions. The geographic region within which what is now Local 1-1000 fell was number 2 - thus the local of the IWA to which Mr. Hird formerly belonged had been designated as Local 2-1000. With the emergence of the IWA-Canada it was determined to do away with the two separate Canadian regions and all locals bore the same numerical prefix, namely "1". Thus, we were told, the local of which Mr. Hird is currently the secretary treasurer was designated as "1-1000".
6. It was clear from Mr. Hird's evidence that there is a certain (at least perceived) continuity as between the former IWA Local 2-1000 and the current IWA-Canada Local 1-1000. I note, however, that I was not asked to find that the latter is a successor to the former within the meaning of the Act. This is perhaps not surprising since it was also not asserted that IWA Local 2-1000 has ever explicitly been found by this Board to be a trade union within the meaning of the Act. In any event, whatever specific legal conclusions might be available or useful regarding the "transformation" of IWA Local 2-1000 into IWA-Canada Local 1-1000, it is clear that the applicant views itself as having a considerable history as a trade union - we were advised that the applicant will be celebrating its 40th anniversary in 1999 (a period which dates to the creation of IWA Local 2-1000). In other words, the applicant views the history of IWA Local 2-1000 as part of its own.
7. In support of its claim the applicant filed a copy of the Local Union Charter dated December 1, 1987 and issued by the IWA-Canada. Also filed was a copy of the IWA-Canada constitution (Revised October 1995) as well as a copy of what was described as the most current version of the applicant's bylaws (as amended May 31, 1997).

8. Mr. Hird also provided some detail as to the scope of the applicant's activities. We were told that it currently boasts some 2000 members spread across some 30 bargaining units. There are seven members of the executive board, 2 of whom are full-time and one of whom is part-time paid staff of the local. Each bargaining unit has its own sublocal chairman and (usually) a bargaining committee. The staff of the local service the units and participate in collective bargaining. Mr. Hird has copies (on disk) of all of the documents described as collective agreements pertaining to the bargaining units (they are typically styled as between the applicant and the relevant employer). Part of Mr. Hird's duties also include providing sublocal chairmen with copies of model collective agreement language pertaining to health and safety issues.

9. On the basis of the evidence just described, the Board was asked to conclude that applicant had established that it was a trade union within the meaning of the Act. The responding party employer urged that such a conclusion be rejected.

10. In asking us to reject the conclusion urged upon us by the applicant, the employer did not dispute the evidence we had heard regarding the nature and scope of what might be described as Local 1-1000's collective bargaining activities. Indeed, that evidence was not even challenged in cross-examination. The employer focused instead on what might be characterized as the "technical deficiencies" of the applicant's efforts to prove its status as a trade union.

11. Two specific difficulties in the applicant's evidence were highlighted. First of all, while a copy of the charter issued to the applicant by IWA-Canada was tendered in evidence, neither of the IWA-Canada constitutions which were filed (the 1988 and the 1995 versions) were in place at the time that the charter was issued in 1987. It is therefore impossible to categorically conclude that the charter was issued in accordance with the terms of the IWA-Canada constitution.

12. Similarly, the document purporting to be the by-laws of the local suffers certain shortcomings. First of all, it appears to be the most current version (as amended May 31, 1997) and therefore these may not be the by-laws in the form that they were first adopted following the issuance of the charter, thus making it again impossible to categorically determine whether the by-laws first adopted conformed with the terms of the constitution. Quite apart from that concern is the fact that the local by-laws filed bear the name of "Local 1000" not "Local 1-1000". In other words, no by-laws bearing the name "Local 1-1000" were filed in this matter.

13. In response to these arguments, the applicant asked us to conclude from Mr. Hird's evidence that the constitution and by-laws which the employer argued ought to have been filed were in fact substantially identical to the more recent versions which were put before us. As far as any difficulties or questions which might arise from the fact that the by-laws filed are in the name of Local 1000 rather than Local 1-1000, Mr. Hird also testified that the next chapter of the fate of numerical prefixes was in the process of its completion. Just as the move from the International to the National union saw the consolidation of numerical prefixes, Mr. Hird testified that a decision has been taken but not fully implemented (no new charter has issued) to remove the numerical prefix altogether. In other words Local 1-1000 will become Local 1000. Mr. Hird's evidence was consistent with the conclusion that this merely represents a change in name, not the creation of a new entity.

14. In support of their positions the parties directed my attention to a number of decisions of this Board including *Opera Ghost Productions Inc.*, [1990] OLRB Rep. Mar. 325; *Kubota Metal Corporation Fahramet Division*, [1995] OLRB Rep. Apr. 467; *Mecanobus Ontario Ltd.*, unreported May 27, 1996; and *Black Photo Corporation*, [1997] OLRB Rep May/June 347.

15. Historically, the most traditional way to establish and later demonstrate the existence of a trade union was by complying with what have been described as the "five steps". These have been set



out in numerous decisions of this Board including *Local 199 U.A.W. Building Corporation*, [1977] OLRB July 472 at paragraph 10:

- (1) A constitution should be drafted setting out, among other things, the purpose of the organization (which must include the regulation of labour relations) and the procedure for electing officers and calling meetings;
- (2) the constitution should be placed before a meeting of employees for approval;
- (3) the employees attending such meeting should be admitted to membership;
- (4) the constitution should be adopted or ratified by a vote of said members;
- (5) officers should be elected pursuant to the constitution.

16. It is by now, however, more than abundantly clear that embarking upon and subsequently proving the completion of the “five steps”, while generally sufficient, is by no means the exclusive fashion of creating and subsequently demonstrating the existence of a trade union (see for example *Opera Ghost*, cited above, and *Service Employees International Union*, [1991] OLRB Rep. Feb. 267).

17. In addition, the Board in the *Black Photo* case, cited earlier, has acknowledged that the five steps are most often pertinent in the case of a newly formed organization. The nature and parameters of the Board’s inquiry may be quite different in the case of an organization that has existed for a considerable period of time. In such a case it will be less critical to focus on the steps originally taken to bring the organization into existence. Neither will it be critical to establish a “technically satisfactory constitutional continuum” from the inception of the organization to the present (see *Ontario Hydro*, [1989] OLRB Rep. Feb. 185 at paragraph 44 and the cases cited therein). It may well be that the nature of the conduct and activities of an organization over a protracted period of time will be a significant factor in the Board’s determination of whether that entity is a trade union within the meaning of the Act (See for example *Susan Forbes*, [1993] OLRB Rep. Dec. 1283 and the cases cited therein).

18. Furthermore, and quite apart from the preceding considerations, there has long been a substrand of the Board’s jurisprudence as it pertains to chartered locals of established trade unions seeking to establish their own status as a trade union before this Board. It is perhaps fair to say that even some of the Board’s earlier decisions contemplated a process less rigorous than the five steps in the case of local charters. In *Pacific Plating Limited*, [1973] OLRB Rep. May 286 the Board (at paragraph 6) described it as follows:

The Board has recognized that there are many well known international and national unions and has required a filing of a copy of their by-laws together with the charter in order to prove that the local applying for certification was duly and properly brought into existence in accordance with the by-laws of the international or national.... In order for a local to show that it properly came into existence it is usual to merely adduce evidence of the charter to show that the applicant applying for certification is a proper “off-shoot” of the international or national union.

(A consistent approach was followed in the more recent case of *Quetico Centre*, [1990] OLRB Rep. Nov. 1149.)

19. Having considered the evidence, the authorities and the submissions of the parties, I am satisfied that the applicant is a trade union within the meaning of the Act. It is true that if the applicant were relying exclusively on the grant of a charter from the parent trade union, there might, as employer counsel so ably pointed out, be certain deficiencies in its case. But even if these deficiencies might otherwise be fatal to the applicant’s case (a question which it is unnecessary for me to decide), when I consider that evidence together with the undisputed evidence regarding the nature and scope of the applicant’s ongoing activities I am satisfied that the applicant is a trade union. In this regard, I note

again that the applicant has some 2000 members and is involved in bargaining documents that the workplace parties describe as collective agreements in some 30 bargaining units. I also observe that the by-laws identified as those governing the applicant's activities contain the types of provisions typical of trade union constitutional documents (an appropriate objects clause, provisions regarding officers and their election, regular meetings and the raising of funds).

20. In all of the circumstances, I am satisfied that the applicant is a trade union within the meaning of the Act and I so find. In view of this finding and having regard to the agreement of the parties (which was contingent on such a finding) the name of the applicant in Board File 2145-97-U has been amended to read "IWA-Canada, Local 1-1000".

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**4096-96-R; 4328-96-U** United Food and Commercial Workers International Union, AFL-CIO-CLC, Applicant v. **Hercules Molded Products Inc.**, Responding Party; United Food and Commercial Workers International Union, Applicant v. Hercules Molded Products Inc., Responding Party

Certification - Membership Evidence - Practice and Procedure - Employer asking Board not to give effect to representation vote because no vote ought to have been ordered in the first place - Board affirming approach to determining "appearance" of 40 percent support described in *City of Toronto* case - In making that determination, Board to have regard only to membership evidence filed by union and to its estimate of the number of persons in its proposed bargaining unit - Certificate issuing

**BEFORE:** *Pamela Chapman*, Vice-Chair.

**APPEARANCES:** *John L. Stout, Michael Doyle, Julie Marentette* and *Katherine Allan* for the applicant; *Patrick Milloy* and *Emmanuel Azzopardi* for the responding party.

**DECISION OF THE BOARD;** October 1, 1997

1. Board file 4096-96-R is an application for certification. Board file 4328-96-U is an application pursuant to section 96 of the *Labour Relations Act, 1995* ("the Act") alleging violations of the Act by the responding party employer ("the employer"). At the outset of the hearing in this matter, the parties advised the Board that the section 96 complaint had been resolved. Having regard to the minutes of settlement filed with the Board, the complaint in Board file 4328-96-R is hereby withdrawn by leave of the Board.

2. In the certification application, a representation vote was held on March 13, 1997, pursuant to the Board's direction of March 11, 1997. The ballot box was sealed. On May 8, 1997, the ballots were counted by the agreement of the parties. There were twenty-two (22) persons on the voters list; twenty-one (21) persons cast ballots. Of those voting, twelve (12) persons cast ballots in favour of the applicant ("the union"), one (1) person voted against the applicant, and eight (8) ballots were segregated due to challenges to the status of the persons voting. Regardless of the way in which the segregated ballots were cast, therefore, the union is in a position to be certified following the vote.

3. A number of issues remain outstanding, however, and a hearing was convened to hear the parties' evidence and submissions. The parties have been unable to agree on a description of the bargaining unit. The applicant seeks certification of the following bargaining unit:

all employees of Hercules Moulded Products Inc. in the Township of Sandwich South save and except persons above the rank of foreperson, office, clerical and temporary employees.

4. The employer takes the position that temporary employees should not be excluded, while agreeing that "employees of temporary help agencies" are properly excluded.

5. The union challenges nine (9) employees as not falling within its proposed unit. Two (2) employees, J. Grover and L. Mower, are challenged as not being employees within the meaning of the Act. The union asserts that seven (7) further employees are temporary employees: A. Abdallah, J. Azzopardi, S. Dutut, V. Fox, G. Leonard, P. Sladic and S. Talley. As noted above, these challenges are not numerically significant.

6. Finally, the employer takes the position that no representation vote should have been held in this matter, as, according to the employer, the Board ought not to have found that it appeared that not less than forty (40) per cent of the individuals in the bargaining unit proposed by the union were members of the union at the time that the application was made. This argument flows from the employer's position that there were twenty-two (22) individuals in the applicant's proposed bargaining unit on the certification application date. The union filed membership evidence on behalf of eight (8) persons, out of a bargaining unit which they estimated contained thirteen (13) persons on the date the application was filed. The union therefore had more than forty (40) per cent support if their estimate of the number of persons in the bargaining unit was considered, but less than forty (40) per cent on the employer's numbers. The employer argues that the Board ought to have taken into account the number of employees claimed by it to be in the unit, and therefore declined to order a vote.

7. No representations from employees in the proposed bargaining unit were received during the period following the vote, and no employees attended at the hearing and took any position on these issues.

8. The Board's decision dated March 11, 1997 contains the following paragraphs relevant to this dispute:

• • •

3. It appears to the Board on an examination of the evidence before it, that not less than forty per cent of the individuals in the bargaining unit proposed in the application for certification were members of the union at the time the application was made.

4. The Board directs that a representation vote be taken of the individuals in the following voting constituency:

all employees of Hercules Moulded Products Inc. in the Township of Maidstone, save and except persons above the rank of foreman, office and clerical employees and employees of temporary help agencies.

• • •

7. There may be a dispute between the parties as to whether or not "temporary employees" or "employees of temporary help agencies" should be included in the bargaining unit. If any individual holding such a position wishes to cast a ballot, the individual shall identify himself or herself as occupying a disputed position and such individual shall then be entitled to cast a ballot. Any ballot cast by such an individual shall be segregated and not counted until the Board so orders or the parties agree. ...



9. It appears from this decision that the Board had regard to the estimate of the number of persons in the bargaining unit provided by the union in the application, and not to the number of persons claimed by the employer to be in the unit, in reaching its decision to order a representation vote. Indeed, the Board's practice in that regard is discussed at some length in *The Corporation of the City of Toronto*, [1996] OLRB Rep. July/August 552.

10. The employer in this case admitted candidly that it wished to make the same arguments concerning the assessment by the Board of an appearance of forty (40) per cent support as were made by counsel for the employer, and rejected by the majority, in the *City of Toronto* case. It relied as well upon the dissent of Board Member Rundle in that case. The employer acknowledged that the decision of the majority was upheld on judicial review, but relied upon the fact that the Court had not explicitly found the decision of the Board to be correct, but only not patently unreasonable (reported at [1997] OLRB Rep. Jan./Feb. 169). Counsel for the employer urged us not to adopt the reasoning of the majority in *City of Toronto*, arguing that while it may not be patently unreasonable, it is nonetheless wrong, and submitted that the interpretation of the dissenting Board member in that case is correct.

11. Having had the opportunity to review the reasoning of the Chair of the Board in the decision in *City of Toronto*, both before the hearing in this matter and during argument, I am satisfied that the decision of the majority is not only not patently unreasonable, but is correct. At the conclusion of oral argument in this matter, I gave an oral ruling to that effect, and undertook to provide a written decision to follow.

12. I will not reproduce in this decision an excerpt from the *City of Toronto* decision, as it is a very lengthy and thorough exploration of the arguments both for and against the proposition the employer seeks to advance in the present matter: that the Board must consider the employer's calculation of the number of employees in the bargaining unit before deciding whether or not there is an appearance of forty (40) per cent support so as to require the holding of a representation vote. As noted above, the employer in this matter adopted the arguments of counsel for the employer in the earlier case, so for the same reason I will not outline at length the arguments made before me. However, I will review in this decision any arguments made by the employer which are not well canvassed in the *City of Toronto* decision, and will also comment on the specific facts of the case before me as they relate to the forty (40) per cent issue.

13. Section 8(2) of the Act reads as follows:

• • •

8. (2) If the Board determines that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appear to be members of the union at the time the application was filed, the Board shall direct that a representation vote be taken among the individuals in the voting constituency.

14. This section of the Act is the centrepiece of the employer's argument in this case, as it was in the *City of Toronto* case. Counsel for the employer argued that the issue of how the Board determines whether or not to order a representation vote pursuant to this section is simply a matter of statutory interpretation, on a question which he characterized as jurisdictional. According to the employer, the Board must be correct in its interpretation of section 8(2) as it is the beginning question, the threshold issue, and if the Board doesn't get it right it taints the whole certification process. Counsel urged the Board not to consider what he called "administrative convenience" (in respect of the Board's stated intent to hold votes quickly), in determining this issue.

15. The argument concerning the correct interpretation of section 8(2) is that the term "appear" in this section applies only to the Board's assessment of the number of employees who are members of

the union, and not to the assessment of the number of employees who are in the bargaining unit, against which number the number of members must be compared in order to determine whether or not the level of forty (40) per cent support has been met. The contrary position, and the one which has been consistently adopted in Board decisions since November of 1995, is that “appear” applies generally to the Board’s assessment under the section. On that analysis, the Board need not determine the actual number of employees in the proposed bargaining unit prior to determining whether or not there is sufficient support to order a representation vote. In practice, the Board looks only to the estimate of employees provided by the union in its application and assesses the appearance of support by comparing the number of members established by the filing of membership evidence against that estimate.

16. It cannot really be argued that the interpretation of the language of the section offered by the employer is the only clear meaning; it is at least as likely that the word “appear” applies generally to the Board’s task as described in the section. Given, then, that the language of section 8(2) is at best ambiguous on this question, it is appropriate that in determining its approach to the section the Board have regard to the language of other related sections of the Act, to the goals of the certification sections of the Act and of the Act more generally. These considerations are outlined exhaustively in the earlier decision in *City of Toronto*, and I will not discuss them fully in these reasons. However, I will say that it seems important in considering what interpretation of the language the Board should adopt to have regard to the following:

- (i) that an application for certification must include or be accompanied by an *estimate* of the number of individuals in the unit [section 7(12)] (emphasis added);
- (ii) that the statute does not require that the employer file a response to the application nor any other material, except for its proposed bargaining unit description where it disagrees with that proposed by the applicant. In particular, the employer is not directed to file its calculation of the number of individuals in the unit [section 7(14)];
- (iii) that the “number of individuals in the proposed bargaining unit who appear to be members of the trade union” must be determined “with reference only to the information provided in the application for certification and the accompanying information provided under subsection 7(13) (a list of names of union members in the proposed bargaining unit and evidence of their status as union members) [section 8(3)];
- (iv) that the statute absolutely prohibits the Board from holding a hearing when making a decision regarding the voting constituency or determining the appearance of forty (40) per cent support [section 8(4)]; and,
- (v) that a secret ballot representation vote, if it is directed, must be held within five days, unless the Board orders otherwise [section 8(5)].

17. As noted, the statute does not require that the employer provide its calculation of the number of employees in the applicant’s proposed bargaining unit, which might suggest that the Board is not required to consider the employer’s calculation in determining whether or not to hold a representation vote. However, the employer argues that the Board itself has decided to request this information, and having done so, it must consider the information pursuant to section 8(2). It is not accurate to say that the Board has asked the employer for such a calculation in a way which suggests that it will give it some consideration in determining whether or not to order a vote. In fact, Form TA-2, the response form, does not request that the employer calculate or advise the Board of the number of employees in

the applicant's proposed bargaining unit. Section 3 of the form asks for the "*total* number of employees of the responding party at the location(s) described in the applicant's proposed bargaining unit" (emphasis added), which number includes all of the employees of the employer, in and out of the proposed unit. Section 6 of the response form asks for "the number of employees in the unit proposed *by the responding party* on the date the application was made", broken down by location (emphasis added). The employer is not asked whether or not it agrees with the estimate of the number of employees in the proposed bargaining unit provided by the applicant, or for its own calculation of that number. In contrast, it is asked explicitly for its description of the appropriate bargaining unit, and whether or not it asserts that a vote should be held on the fifth day following the application filing date.

18. The only place where the employer discloses its view of the number of employees in the bargaining unit proposed by the applicant is on Schedule A to the response, which together with Schedule B should form a list of all of the employees of the employer who might be in the voting constituency, together with information about their job classification, last day worked, reason for absence and expected date of return. These schedules also disclose whether or not employees are full-time, part-time or student employees. Schedule A is meant to include all of the employees which would be included in the bargaining unit proposed by the applicant; to Schedule B the employer adds any employees who would not be in the applicant's proposed unit but would be in the unit proposed by the employer.

19. These employee lists form the basis for the negotiation between the parties with the assistance of a Labour Relations Officer, during the days between the application filing date and the date of the vote, of a voters' list. They also disclose in a very helpful way the dimensions of any dispute between the parties about the appropriate bargaining unit, which can assist the Board in crafting an appropriate voting constituency, in making directions concerning the taking of votes such as the segregation of ballots, and which will facilitate negotiation between the parties during the "pre" and "post" vote periods of an agreement on the appropriate bargaining unit. The lists are used by the Labour Relations Officer to register any challenges to individuals' inclusion in the bargaining unit, which may result in the segregation of ballots and/or agreements to exclude individuals or to count their ballots. In short, the employee lists contained in Schedules A and B are an important working document which facilitate the expeditious processing of certification applications, the quick holding of votes, and the reaching of agreements by the parties.

20. Should the Board's determination to require the filing of this information in a timely fashion compel a particular interpretation of section 8(2) of the Act? I cannot agree that the Board's exercise of its general administrative power to determine its own procedure and to make rules and create forms pursuant to sections 110(16) and (17) of the Act, should govern statutory interpretation in the manner suggested by the employer. The fact that the Board utilizes information from the employer about the number of employees in a proposed bargaining unit for a number of purposes unrelated to its mandate under section 8(2) (and for purposes which are all subject to the agreement of the parties and/or ultimate adjudication, *after* the vote is held) does not mean that it is required to consider that information to determine whether or not there is forty (40) per cent support. Certainly its failure to do so is not an error of jurisdiction, as suggested by the employer.

21. The fact that section 8(4) of the Act provides that the Board shall not hold a hearing when making a decision as to whether or not there is an appearance of forty (40) per cent support requiring the holding of a vote, or when determining the voting constituency, is also a significant impediment to the Board adopting the interpretation of section 8(2) urged upon us by the employer. If the Board were to consider the information concerning the number of persons in the proposed bargaining unit provided by both parties, how would it resolve a difference between the union's estimate and the employer's calculation? Without a hearing at which the parties might call evidence and the Board make factual



findings, it is not clear how the Board would ever be able to resolve a factual dispute about the number of persons in the bargaining unit, much less resolve it in a timely fashion in order to proceed to a quick vote.

22. Counsel for the employer submitted that alternatives to a hearing, recognizing the limit in section 8(4), include an inquiry by a Labour Relations Officer and/or written submissions by the parties. Neither of these approaches would eliminate the need for a hearing, however, where the parties disagreed on facts. Conceding that there may be no way to determine the actual number of employees in the bargaining unit without holding a hearing, the employer suggested that the Board would therefore be better advised in the face of a factual dispute to accept the employer's calculation of the number of persons in the unit, rather than the union's estimate, on the basis that the employer possesses the best information and is required to provide a sworn statement in the form of Schedules A and B to the response.

23. The present case provides a perfect example of the problem with this approach. The difference between the union's and the employer's numbers in this case are represented by the nine persons challenged by the union. Had the Board accepted at face value the employer's assertion that there were twenty-two (22) employees in the unit, no vote would have been ordered and the application would have been dismissed, even though the resolution of the dispute over the union's challenges could well result in a confirmation of the union's estimate and therefore its entitlement to a vote. A dismissal in these circumstances would also frustrate entirely the expression of employee wishes through a secret ballot vote, which in this case resulted in a clear demonstration of majority support for the union, regardless of the level of support it was able to demonstrate at the time of filing, and regardless of the outcome of the challenges. Such an approach seems entirely inconsistent with the statutory framework and with the goals of the Act.

24. Having regard to the factors outlined above, and to all of the matters canvassed in the decision of the majority in *City of Toronto*, I ruled at the hearing that the Board's approach to the interpretation of section 8(2), which has regard only to the membership evidence filed by the union and its estimate of the number of persons in its proposed bargaining unit in order to determine whether or not there is an appearance of forty (40) per cent support, is the most supportable interpretation of the statutory language.

25. Finally, it is of some significance that there is no allegation in this case that the union deliberately misrepresented the number of employees in the bargaining unit when it provided its estimate to the Board. In cases following the decision in *City of Toronto* this allegation has been made, and the Board has considered such claims as possible fraud allegations pursuant to section 64 of the Act (see for example *R-Theta Inc.*, [1997] OLRB Rep. Jan./Feb. 116). However, the instant case is one where the union has maintained its position on the size of the bargaining unit, through the negotiation of a voters' list, the holding of the vote, and to the present time, when the challenges remain unresolved. It cannot be said, therefore, that the union deliberately underestimated the size of the bargaining unit in order to gain some strategic advantage; rather, this is a case where there is a true disagreement about the scope of the unit which may ultimately have to be heard by the Board if it cannot be resolved in bargaining.

26. The parties have agreed that they will attempt to resolve in bargaining the outstanding disputes concerning the description of the bargaining unit and the status of nine individuals which are outlined in paragraphs three (3) through five (5) above, and that this matter be adjourned *sine die* pending these efforts.

27. The Board has determined, however, that the applicant's right to certification cannot be affected by the Board's ultimate decision as to the inclusion or exclusion of the disputed classifications.

On the taking of the representation vote directed by the Board, more than fifty per cent of the ballots cast by employees in the bargaining unit were cast in favour of the applicant, regardless of the outcome of the dispute over the bargaining unit.

28. Accordingly, the Board pursuant to its discretion under section 9(2) of the Act, having regard to the agreement of the parties and pending the final resolution of the composition of the bargaining unit, certifies the applicant as the bargaining agent for:

all employees of Hercules Moulded Products Inc. in the Township of Sandwich South, save and except persons above the rank of foreperson, office and clerical employees *and pending resolution by the Board excluding as well temporary employees, John Grover and Lindsay Mower.*

29. A final certificate must await the final determination of the appropriate bargaining unit.

30. The Registrar will destroy the ballots cast in the representation vote taken in this matter following the expiration of 30 days from the date of this decision unless a statement requesting that the ballots should not be destroyed is received by the Board from one of the parties before the expiration of such 30 day period.

31. Meeting and hearing dates set previously are hereby cancelled.

32. The responding party is directed to post copies of this decision immediately, adjacent to all copies of the "Notice of Vote and of Hearing" posted previously. These copies must remain posted until the date that had been set for the hearing.

34. Having regard to the agreement of the parties, the Board hereby consents to adjourn this application *sine die* for a period not exceeding one year. The parties are to advise the Board within that time of the status of their discussions on bargaining unit description in order that the certification may be finalized.

35. This panel will remain seized.

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**3480-96-R** Service Employees International Union, Local 204, Applicant v. **Humber/Northwestern/York-Finch Hospital**, Canadian Union of Public Employees, Local 1080 and Canadian Union of Public Employees, Local 3258, Responding Parties v. International Union of Operating Engineers, Local 796, The Ontario Public Service Employees Union and Association of Allied Health Professionals: Ontario, Interveners

**Sale of a Business - Parties agreeing that hospital merger constituting sale of a business under the Act and that there has been intermingling of employees - Board satisfied that appropriate bargaining unit configuration for merged hospital is one that includes maintenance employees and operating engineers within the "service unit"**

**BEFORE:** *R. O. MacDowell*, Chair.

**APPEARANCES:** *Mary Cornish* for the SEIU; *Brian O'Byrne* for the successor hospital; *Brian Sheehan* for CUPE and its Locals; *Wesley Emerson* for IUOE Local 796.

**DECISION OF THE BOARD;** October 10, 1997

## I

1. This is an application under section 69 of the *Labour Relations Act*, which arises from the recent merger of three hospitals: "Humber Memorial", "Northwestern", and "York-Finch".

2. The parties are agreed that this hospital merger constitutes a "sale of a business" within the meaning of section 69 of the Act. The parties are further agreed that there has been an "intermingling of employees" within the meaning of section 69(6) of the Act.

3. Sections 69(6) and 69(8) read as follows:

69. (6) Despite subsections (2) and (3), where a business was sold to person who carries on one or more other businesses and a trade union or council of trade unions is the bargaining agent of the employees in any of the businesses and the person intermingles the employees of one of the businesses with those of another of the businesses, the Board may, upon the application of any person, trade union or council of trade unions concerned,

- (a) declare that the person to whom the business was sold is no longer bound by the collective agreement referred to in subsection (2);
- (b) determine whether the employees concerned constitute one or more appropriate bargaining units;
- (c) declare which trade union, trade unions or council of trade unions, if any, shall be the bargaining agent or agents for the employees in the unit or units; and
- (d) amend, to such extent as the Board considers necessary, any certificate issued to any trade union or council of trade unions or any bargaining unit defined in any collective agreement.

• • •

(8) Before disposing of any application under this section, the Board may make such inquiry, may require the production of such evidence and the doing of such things, or may hold such representation votes, as it considers appropriate.

4. Section 69(6) of the Act applies when the "businesses" of the predecessor(s) and successor have been integrated and their work forces have been intermingled, so that there is a question about whether the pre-existing pattern of collective-bargaining units can, or should, be preserved in the new organizational setting. When such questions arise, the Board has the power to maintain or change the boundaries of existing bargaining units, to determine which union represents the employees in those units, and to amend the bargaining unit provisions of any surviving collective agreement(s). In effect, the Board has the power to rationalize the bargaining structure; and where there are two or more unions involved, the Board can conduct representation votes, so that employees can choose which union they want to represent them.

5. In other words, when the intermingling involves the operational merger of two or more groups of unionized employees, the Board examines the pre-existing bargaining structure in order to decide whether maintaining these units still makes sense in the new setting - which is to say, the Board determines pursuant to section 69(6)(b) "whether the employees concerned [the intermingled group] constitute one or more *appropriate* bargaining units".

\* \* \*

6. In the instant case, the successor employer and the various unions in the workplaces have resolved many of the bargaining unit issues that were generated by the merger of the three hospitals.



However, the parties cannot agree on whether the amalgamated hospital should have a separate bargaining unit of “maintenance employees” (i.e. separate and distinct from the general “service employees bargaining unit”). Nor do the parties agree on what to do with the handful of operating engineers at the former York-Finch site, who are now represented by the IUOE. Should those half dozen employees have their own “stand-alone unit” as well? Or should they be integrated into a larger “maintenance unit”, or into an even broader “service unit”? Those were the choices put to the Board for its determination. The parties did not posit any other alternatives; and the successor hospital, AHPO and OPSEU resolved their differences respecting the “paramedical unit”, on agreement, and without adjudication by the Board.

7. The Board received the parties’ representations with respect to the maintenance employees and engineers on September 16, 1997. At the end of their submissions, the parties urged the Board to make its determination as soon as possible, so that they could get on with their restructuring - taking such representation votes as may be necessary to finalize the identity of the bargaining agent(s).

8. In deference to the parties’ request, the Board has decided to issue this decision, with somewhat abbreviated reasons.

9. For ease of exposition, it will be convenient to use the “bargaining unit labels” that counsel used in the course of argument (i.e. “service unit”, “clerical unit”, “maintenance unit”, etc.).

## II

10. Prior to the merger, the bargaining-unit pattern at the three hospitals (somewhat simplified and omitting nurses and paramedicals) looked like this:

<u>Hospital Bargaining Units</u>	<u>Trade Union</u>
<u>Humber</u>	
(maintenance employees and operating engineers)	non-union
service unit	CUPE
clerical unit	CUPE
<u>Northwestern</u>	
(maintenance employees and operating engineers)	CUPE
service unit	SEIU
clerical unit	SEIU
<u>York-Finch</u>	
service unit ( <i>including</i> operating engineers and maintenance employees)	SEIU
clerical unit	SEIU
operating engineers (6 employees)	IUOE

11. Nominally, at least, each of the predecessor hospitals had a “service unit”. In that regard, the bargaining unit pattern looks, superficially, like what one would find in many public hospitals. However, the chart and the labels are a little misleading, because the composition of the “service unit” is not the same at each hospital, nor is it necessarily what the Board itself would have found to be

“appropriate” in the absence of the agreement of the parties. In particular, the so-called “service units” do not exhibit uniform treatment for maintenance employees and operating engineers - who will often be found in a hospital “service unit”, and certainly can be “appropriately” situated there.

12. On an application for certification, the Board is required to determine the “unit of employees that is *appropriate* for collective bargaining” [see section 9 of the Act]. However, in a hospital setting, and in the absence of the parties’ agreement, the Board would not usually *exclude* maintenance employees or operating engineers from the standard hospital “service unit” - as was apparently done for some reason at Humber Memorial. Maintenance employees are regularly part of that “standard” “service unit”. Nor, if it were disputed and the Board had to adjudicate the matter, would the Board normally find a *separate* bargaining unit of maintenance employees and operating engineers (as exists at Northwestern) to be “appropriate”. The Board would not normally make the “maintenance department” a separate bargaining unit, nor would it segregate and bundle together a unit of “maintenance” classifications.

13. In the absence of the agreement of the parties, the Board would not separate out the maintenance employees and operating engineers in this way because, in both cases, it would lead to anomalous (non-standard) bargaining-unit descriptions, and would contribute to an unduly fragmented bargaining unit structure. See, for example: *St. Joseph’s Hospital (Sarnia)*, [1983] OLRB Rep. June 984; *Queen Elizabeth Hospital*, [1982] OLRB Rep. Nov. 1711, and the many “hospital cases” referred to therein. On the other hand, if the parties do agree on the more fragmented bargaining structure, the Board has been inclined (at least in recent years) to accept their agreement - on the theory that the parties are in the best position to assess the potential for actual problems, and it is they who must live with the results of an improvident agreement.

14. The cases referred to in the preceding paragraph (and many others) are representative of the Board’s thinking over the last 30 years about what the bargaining unit pattern in public hospitals should look like. The Board has determined that fragmentation of the bargaining structure is undesirable, and that in order to avoid that fragmentation, there should not be a separate bargaining unit for maintenance employees. See: *York Central Hospital*, [1978] OLRB Rep. Apr. 382; *Joseph Brant Memorial Hospital*, [1981] OLRB Rep. Nov. 1598; *Queen Elizabeth Hospital*, *supra*; and on their inclusion in service units see: *Brockville General Hospital*, 57 CLLC ¶18,061; *St. Mary’s General Hospital*, [1963] OLRB Rep. Feb. 496; *Toronto General Hospital*, [1972] OLRB Rep. Jan. 33; and cf. *St. Joseph’s Hospital (Sarnia)*, [1983] OLRB Rep. June 984. Moreover, operating engineers are narrowly confined to their traditional “craft grouping”, and are only granted *that* craft unit in the very limited circumstances spelled out in section 9(3) of the Act.

15. Accordingly, at Northwestern and Humber, the bargaining unit pattern and bargaining unit perimeters are probably not something that the Board itself would create, if the Board were looking at a fresh situation, the issue was in dispute, and the Board was asked to make an independent determination of “appropriateness”.

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16. CUPE concedes that a separate bargaining unit of “maintenance employees” would be an anomaly, and that it is not the kind of unit which the Board would find to be “appropriate” on an application for certification. However, counsel maintains that a separate bargaining unit and separate treatment for maintenance employees are something that two of the predecessor hospitals have lived with for many years. He submits that, against that background, an “extra” bargaining unit for maintenance employees - even if it is something of an anomaly - would not make much difference. In counsel’s submission, the purpose of section 69 is to *preserve* bargaining rights; and the best way to do that, is to preserve a separate bargaining unit for maintenance employees.

17. It follows from CUPE's argument, of course, that the non-union maintenance group at the Humber Memorial site would also have to be part of that "maintenance unit". So would any maintenance employees now situated in the SEIU's "service unit" at York-Finch. For it would make no sense to have more than one maintenance bargaining unit, or to have a maintenance bargaining unit that did not encompass all maintenance workers.
18. The "maintenance unit" proposed by CUPE would be much bigger. But in order to create that maintenance unit, it would be necessary to subdivide the service unit at York-Finch, by removing the maintenance employees from it, and transferring them into the maintenance unit that CUPE proposes.
19. In effect, what CUPE's argument boils down to is this: because Humber Memorial and Northwestern had idiosyncratic service-unit descriptions that excluded maintenance employees and operating engineers, and because maintenance employees and operating engineers had a separate unit at Northwestern, the Board should subdivide the standard service unit at York-Finch, so as to preserve the "Northwestern pattern" in the new organization.
20. CUPE does not dispute that the more broadly described "service unit" (i.e. including the maintenance employees) is *appropriate* - perhaps even *more appropriate* than what CUPE proposes. Nor does CUPE dispute that maintenance employees are commonly and appropriately considered part of the service unit. However, CUPE asserts that under section 69(6), a separate maintenance unit is *also "appropriate"*, because that is the pattern that is rooted in local history. In CUPE's submission, that history should govern the pattern of bargaining units in the merged hospital.
21. The successor hospital supports CUPE's proposal - pointing out that it has dealt with a separate maintenance/ engineers group in the past, and that it does not foresee any problems in this regard. The successor hospital is prepared to tolerate more fragmentation (an extra bargaining unit for maintenance employees), as well as the narrower service unit that results.
22. The SEIU opposes the creation or preservation of a separate maintenance/engineers bargaining unit. The SEIU also objects to the subdivision of what it describes as a "standard" and "clearly appropriate" "service unit", so as to conform to what it describes as the anomalous structure in two of the predecessor hospitals.
23. The SEIU submits that its "service unit" definition is *unquestionably appropriate*, and that it should be adopted as the norm for restructuring purposes - because it is more broadly based, because it avoids fragmentation, and because it is "standard", so that it can be more easily matched with collective-bargaining developments elsewhere in the hospital sector. In counsel's submission, *standard units* facilitate extended area bargaining and its proposed definition is more typical and closer to the norm than the service groupings at Humber or Northwestern; moreover, broader-based bargaining units enhance employee mobility and job opportunities, and this too speaks in favour of the comprehensive service unit.
24. Counsel also urges the Board to consider the broader policy ramifications of using the more fragmented, unit pattern, as the template for restructuring under section 69(6). She notes, for example, that the transfer of the male maintenance workers out of the service unit, may add a complication for pay equity purposes, because the male comparators might then be in a separate bargaining unit. Counsel for the SEIU further asserts that the merger of the three hospitals marks a totally new departure, so that the Board should not be ruled by history - particularly an anomalous history. Rather, the Board should use the opportunity to consolidate the bargaining structure and create a *more appropriate* structure than was there before.



25. The IUOE concedes that employee job mobility and job opportunities are enhanced in a broader, more comprehensive bargaining unit - so that, for example, if engineers are displaced from their current jobs, there would be more places for them to "bump" if they were part of a much larger unit. Bigger bargaining units are usually better for employees, since there is a wider range of work alternatives and a broader reach for the exercise of seniority rights. Accordingly, the IUOE does not resist putting its members into a broader *service unit*, because their job security would be better protected as part of this larger grouping. However, the IUOE contends that its name should appear on the ballot in any representation vote affecting this now augmented grouping of service employees.

### III

26. Before turning to the particular questions that the parties have posed in this case, I think that it is useful to mention two aspects of the labour-relations environment that may bear upon the answer to those questions - or at least illuminate the context in which the answer must be given.

27. The first aspect worth mentioning, is the pace of organizational change on the "employer side of the bargaining table" - beginning in recent years with "downsizing" and "restructuring" in the private sector, and now accelerated in the public sector, as cash-strapped governments try to find more efficient ways to deliver public services. Today, across Ontario, hospitals, school boards and municipal institutions are being restructured at an unprecedented pace, and on an unprecedented scale. And although this does not necessarily mean that the resulting institutions will be bigger *overall*, (because the consolidated organization may be smaller than the sum of its parts), it probably does mean that there will be fewer individual organizations, as their diverse elements are welded together and rationalized.

28. Against that background, it seems odd to suggest that the bench mark for bargaining structure should be the status quo, or that one should strive to maintain the checker board of bargaining units that prevailed historically. When business and government organizations are changing - sometimes radically - it seems curious to suggest that collective bargaining structures should stay the same or that the Board should not take the opportunity to evaluate that history in light of current concerns. It seems more appropriate to give serious consideration to consolidation (given the employee intermingling) and to cast a critical eye on bargaining-unit patterns that may retard the ability of employers and employees to adapt to these changes.

29. The current pattern of bargaining units in the broader public sector was, for the most part, established on a case-by-case basis from the 1960s to the mid-1980s - having regard to local conditions and the collective bargaining environment of the time, and, in recent years, giving considerable weight to the parties' agreement (i.e. whether or not the Board itself would find that unit to be appropriate, absent such agreement). And, no doubt, at individual institutions, those bargaining structures have worked more or less well. But I do not think that this history provides an unfailing guideline to what the "appropriate" bargaining structure should look like in the year 2000. Nor is precedent determinative in a situation that is quite unprecedented.

30. In exercising its discretion to determine what is "appropriate" under section 69(6) of the Act, I do not think that the Board can ignore what is going on in the rest of the collective bargaining system. Any sensible reading of the word "appropriate" must take these realities into account. And the dominant reality today is towards fewer, larger public sector institutions - be they hospitals, school boards or municipalities - and fewer, bigger bargaining units.

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31. The second factor that one has to keep in mind is the evolving consensus that broader-based bargaining structures are generally *better* for collective bargaining - and ultimately *better* for *BOTH* employers and employees.

32. This is not to say that “bigger is always better”. However, labour relations boards across the country have all recognized the utility of broader-based bargaining structures, because they are more likely to: promote stability, increase administrative efficiency, enhance employee mobility, and generate a common framework for employment conditions for all employees in an enterprise. Bigger bargaining units also have more critical mass, so that they are better able to facilitate and accommodate change. (See the policy considerations enunciated by the British Columbia Labour Relations Board in *Insurance Company of British Columbia* (1974), 1 Can. LRBR 403 - a case which, incidentally, involved a large public sector institution; and compare, in a different legal context, the decision of this Board in *Mississauga Hydro-Electric Commission*, [1993] OLRB Rep. June 523.)

33. In the absence of statutory prescriptions, there is, today, a pronounced preference for broader-based bargaining units, unless that objective collides in a serious way with the employees’ ability to organize themselves. Indeed, the Board has often favoured broader-based bargaining units, even in certification situations, where the shape of the unit may well influence whether there will be any collective bargaining at all. The Board has recognized that the *structure* of collective bargaining “matters” - as it noted in cases such as *Board of Governors of Ryerson Polytechnical Institute*, [1984] OLRB Rep. Feb. 371; *Bestview Holdings Limited*, [1983] OLRB Rep. Aug. 1250; *The Board of Education for the City of Toronto*, [1986] OLRB Rep. June 900; *Kidd Creek Mines Limited*, [1984] OLRB Rep. Mar. 481; *TV Guide Inc.*, [1986] OLRB Rep. Oct. 1451; and, more recently, *Pepsi Cola*, [1995] OLRB Rep. Aug. 1311. Fragmented bargaining structures can pose serious labour-relations problems. Conversely, broader based bargaining units make collective bargaining go more smoothly and successfully.

34. There is nothing particularly novel about these observations. Nor are they unique to Ontario, or to the Ontario Labour Relations Board. The consolidation of bargaining structures has been ongoing in other jurisdictions for many years (the Post Office, CBC, railways, and airlines come to mind); and policy considerations such as those discussed in the Ontario cases can be found in the reasons of other adjudicators in other jurisdictions. Those boards, too, have been inclined to favour more comprehensive bargaining units unless there are persuasive countervailing considerations. See, for example: *ICBC*, *supra*; *Canadian Pacific Limited* (1976), 1 CLRBR 361; *Saskatchewan Wheat Pool* (1977), 1 CLRBR 510; *Atomic Energy of Canada Ltd.* (1978), 1 CLRBR 92; *British Columbia Telephone Limited* (1977), 2 CLRBR 385; *CBRT and Sea Span International Ltd.* (1979), 2 CLRBR 213; and compare the “rethinking” evidenced in Ontario cases such as *Mississauga Hydro-Electric Commission*, *supra*, and *Caressant Care Nursing Home of Canada Limited*, [1996] OLRB Rep. Sept./Oct. 748.

35. The fact is: bargaining units are being consolidated on a regular basis - either because the legislation requires it, or because the legislation permits it, (e.g. section 7 of Bill 40), or because of employer restructuring, or contingent upon the merger of trade unions themselves. And generally speaking, neutral commentators think that such consolidation is a good thing. Bigger may not always be better, but broader, more comprehensive bargaining units are usually preferable - and more appropriate - than narrow fragmented ones. On the other hand, there may well be a variety of broadly-based groupings (but less than “all employees”) which were and continue to be appropriate despite an operational merger of the predecessor organizations. In the hospital sector, for example, comprehensive units of paramedicals, service workers, etc. have been and may still be appropriate despite the bigger size of the successor organization.

36. In summary, the direction of the law, the direction of policy, the metamorphosis of employer and union organizations, and the evolution of thinking on these issues have, for the most part, all pointed towards broader bargaining units and extended area bargaining.

37. I do not think that one should ignore these trends when applying section 69(6) of the Act.

## IV

38. Section 69(4) of the Act is designed to *preserve* the “like bargaining units” which existed before, with such revisions as may be necessary to eliminate conflict between established bargaining-unit descriptions. By contrast, the terms of section 69(6) are much broader, and contemplate the possible elimination of bargaining units or collective agreements, as well as the termination of bargaining rights - that is, the restructuring of bargaining units, bargaining agents, and collective agreements, to meet the new situation. Section 69(6) empowers the Board to take a second look at existing bargaining structures and realign bargaining units and bargaining rights in a manner that makes industrial relations sense in the new circumstances.

39. In each case, the Board has to give some weight to the status quo. But at the same time, the Board also has to consider the desirability of modifying the existing bargaining structure and representational rights in a manner which will better suit the new situation. Unlike section 69(4) where the Board is maintaining “what is” and ironing out definitional conflicts, section 69(6) requires the Board to determine what is “appropriate” - which will not necessarily be what is there already.

40. Section 69(6)(b) contemplates that the Board will designate one or more “APPROPRIATE” bargaining units. The use of the term “APPROPRIATE” is no accident. It suggests an exercise that is similar to the one undertaken by the Board on an application for certification, where there is also a question of “appropriateness” (see section 9 of the Act). And, with that in mind, I do not think the Board should ignore the fact that an existing bargaining structure may be one that the Board would never have found to be “appropriate” in the first place, or may be unnecessarily fragmented.

41. Of course, these general notions of what is “standard” and “appropriate” must be balanced against the fact that an idiosyncratic unit or fragmented bargaining structure may nevertheless have worked quite well in its former organizational setting. The Board’s approach under section 69(6) need not be precisely the same as on an application for certification, where a group of employees is trying to organize for the first time. But, by the same token, where there is a successorship, intermingling, and a “two-union situation”, any inclination to preserve established bargaining rights must be considered in relation to the express power to realign the bargaining structure to meet the new circumstances - recognizing that such realignment will not raise concerns about access to collective bargaining that the Board mentioned in “pure certification” cases such as *Canada Trustco*, [1977] OLRB Rep. June 330 or *K-Mart Limited*, [1981] OLRB Rep. Sept. 1250.

42. On an application for certification, the Board must weigh the question of the “appropriate” bargaining unit, in light of its potential impact on the ability of employees to organize. Too broad a definition would unnecessarily impede the employees’ statutory right to organize themselves - however desirable or “more appropriate” a more comprehensive unit may be. However, in a successorship/ intermingling scenario, the Board usually does not have to worry about that. The situation is more like the one described by the Board in *Stratford General Hospital*, [1976] OLRB Rep. Sept. 459, where two unions were competing and the Board observed:

Even where the Board has found that two competing applications propose appropriate bargaining units, it has exercised a discretion in favour of the more comprehensive bargaining unit, in finding “the” appropriate bargaining unit for the purposes of section 6(1) [now section 9] .... Surely where there are competing applications, the Board can be more concerned with the ideal characteristics of collective bargaining structures in that, whatever the decision, employees will not be denied access to the collective bargaining process.

Similarly, in his text, *Canadian Labour Law*, former Board Chair G. W. Adams, Q.C. commented:



When intermingling involves the merger of two groups of unionized employees, a Board will look to the existing bargaining structure to decide if maintaining the separate units can be justified. The Boards note that the choice of the employees regarding their bargaining agent should be honoured, unless to do so would undermine rational collective bargaining. Balanced against this recognition of the employees' wishes is the preference for single, all-employee units. *Where a conflict arises between these two policy goals, the interest of maintaining industrial peace prevails and undue fragmentation is avoided.* [emphasis added]

43. In other words, where there is no concern about access to collective bargaining, Labour Boards have more scope and more inclination to opt for broader-based bargaining units. Or to put the matter another way: in intermingling situations, where there are different ways to define the new structure and different "degrees of appropriateness", labour boards may be more inclined to opt for the "more appropriate" unit, unless there are compelling countervailing considerations (for example: if there are long-established "craft rights" that have historical and statutory recognition, as well as continuing collective bargaining utility; if there is an existing local structure that facilitates extended area bargaining, or conforms more closely to established sectoral collective bargaining practices; and so on).

44. In the instant case, for example, the issue is not whether maintenance workers or engineers will continue to be represented by one union or another, but rather which union will represent them, and what the bargaining structure should be. Accordingly, in multi-union intermingling situations like the one here, I think that the Board can give less weight to the pre-existing status quo, and can exhibit more concern about the problems of fragmentation, and the establishment of the most coherent and sensible bargaining arrangement for the new business context (again see the comments of the Board in *Mississauga Hydro supra*). Indeed, one cannot really preserve the status quo in this case. The real question (and dispute) is about how it should be changed.

## V

45. I have weighed the practical and policy considerations referred to above. I have also considered the pre-existing status quo and the preference of some of the parties for their more fragmented and somewhat anomalous bargaining-unit structure. However, on balance, I am satisfied that the "appropriate" bargaining-unit configuration for the merged hospital is the one urged upon me by the SEIU; namely, that both maintenance employees and operating engineers should be grouped together for collective-bargaining purposes in the single "service bargaining unit".

46. I do not think that it is "appropriate" to preserve a separate bargaining unit of maintenance employees; nor, in the particular circumstances of this case, is it "appropriate" to preserve a separate quasi-craft bargaining unit containing a handful of operating engineers (a group particularly susceptible to the impact of "de-skilling" - see *Queen Elizabeth Hospital*, [1982] OLRB Rep. Nov. 1711). In this sense, the situation of the engineers is like that of the handful of employees in the "craft unit" considered by the Board in *Municipality of Metropolitan Toronto* [1992] OLRB Rep. March 315) - and ultimately rolled into the larger unit, for the reasons articulated above. Accordingly, whatever utility the former unit structure may have had in the predecessor organizations, I find that the more comprehensive service unit - including engineers and maintenance employees - is what is sensible and appropriate in the new hospital setting.

## VI

47. This decision answers the "policy issue" which the parties have put before the Board for consideration.

48. With the bargaining unit question clarified, the parties should now be able to work out the mechanics of any representation votes which may be required.
49. To this end, the Board hereby appoints Senior Labour Relations Officer Frank Reilly to meet with the parties for the purpose of resolving any outstanding issues with respect to voting rights, voting constituencies, or otherwise.
50. In the event that the parties are unable to resolve any of these issues, they may make further application to the Board.
51. For the purpose of clarity, it should be noted that although Bill 136 was passed while this case was before the Board, this is an application that was made and decided under section 69 of the *Labour Relations Act*. Accordingly, the decision should not be taken as a comment on the issues which may arise under this new legislative umbrella.
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**3317-96-R United Steelworkers of America, Applicant v. KPM Industries Ltd., Responding Party**

**Certification - Bargaining Rights - Bargaining Unit - Union and employer disputing how employer should be named in bargaining unit description - Employer seeking to exclude its "construction division" - Union seeking bargaining unit described as all employees of corporate employer without exclusion - Board finding no cogent reason to restrict bargaining rights as proposed by employer - Certificate issuing**

**BEFORE:** *Laura Trachuk*, Vice-Chair, and Board Members *J. A. Ronson* and *H. Peacock*.

**APPEARANCES:** *Marie Kelly* and *Wess Dowsett* for the applicant; *Elizabeth Keenan* and *Bruce Semkowski* for the responding party.

**DECISION OF THE BOARD;** September 5, 1997

1. This is an application for certification in which a representation vote was held on January 23, 1997. In a decision dated February 19, 1997 the Board certified the applicant under section 9(2) of the Act for an interim bargaining unit described as follows.

all employees of KPM Industries Ltd. in the Town of Onaping Falls, save and except Managers and persons above the rank of Manager and office, clerical and sales staff.

2. The outstanding dispute between the parties is whether the appropriate name of the employer used in the bargaining unit description should be KPM Industries Ltd. or KPM Industries Ltd. c.o.b. as King Packaged Materials Company and Minequip. The applicant (referred to as "the union") takes the position that the name of the responding party (referred to as "the company") in the certificate should be the former and the responding party argues that it should be the latter. The significance of the dispute is whether or not the applicant's bargaining rights should be limited to the two divisions of the company currently operating in Onaping Falls. The company's third division which does not at this time operate in Onaping Falls operates partly in the construction sector, so the issue arises as to whether these potential construction employees should be specifically excluded from the bargaining unit.

**Facts**

3. At the outset of the hearing, the parties provided the Board with an Agreed Statement of Facts as follows:

**AGREED STATEMENT OF FACTS**

1. The United Steelworkers of America applied to represent all employees of KPM Industries Ltd. in the Town of Onaping Falls save and except Managers and persons above the rank of Manager and office, clerical and sales staff. The employer takes the position that the proper name of the employer for the purposes of the certification application is "K.P.M. Industries Ltd. c.o.b. as King Packaged Materials Company and Minequip" (divisions of K.P.M. Industries Ltd.) and that the bargaining unit description should be limited to employees of such divisions in the Town of Onaping Falls. The Union takes the position that the proper name of the employer is K.P.M. Industries Ltd. and that it is not appropriate to limit the scope of the bargaining unit in the manner requested by the Company.
2. K.P.M. Industries Ltd. is incorporated under the laws of the Province of Ontario. The President of the corporation is H. MacPherson.
3. K.P.M. Industries Ltd. operates three divisions; however it is the sole legal entity
  - (i) Minequip
  - (ii) King Packaged Materials Company
  - (iii) King Paving and Materials Company.
4. The bargaining unit applied for by the Union covers the same employees covered by the Company's bargaining unit description. KPM Industries Ltd. in Onaping Falls operates out of one location only and that is a building at 644 Simmons Road.
5. Bargaining unit employees of both the Minequip and King Packaged Materials Company Divisions share a common parking lot, forklift, lunchroom, washroom, employee entrance and punch clock. These employees also are provided with the same benefits and share the same coffee and lunch breaks.
6. The one Minequip bargaining unit employee works the same shift as day shift employees of King Packaged Materials Company. All bargaining unit employees are paid by direct deposit from K.P.M. Industries Ltd. and receive their direct deposit receipts every Thursday.
7. Both Divisions in Onaping Falls each have a shipping and receiving area. All shipping and receiving for both Divisions is done by two employees, one from each Division who are primarily responsible for their own Division's shipping and receiving. However on occasion the shipper receiver of one Division will ship/receive for the other Division. In addition if either of the two employees need help with a heavy/large package for either Division they obtain the assistance of other employees in the King Packaged Materials Company Division and it is shipped and received from the King Packaged Materials Company shipping and receiving area for both Divisions.
8. Minequip is strictly located in the Town of Onaping Falls. The General Manager is Dennis Wrixon. Minequip was previously a separately incorporated company which was purchased by K.P.M. Industries Ltd. in 1994 and was later amalgamated under the Corporate name K.P.M. Industries Ltd. effective April 1, 1995. Since April 1, 1995 both Minequip and K.P.M. Industries Ltd. have operated as one corporation under the name K.P.M. Industries Ltd. (see attached Articles of Amalgamation, Business Names Registration and Corporation Profile Report).



9. Minequip employs sales staff, a production employee and a mechanic/shipper/receiver. At the time of certification there was a production employee and a mechanic/shipper/receiver in the bargaining unit. There is currently only a mechanic/shipper/ receiver remaining in the bargaining unit.
10. Minequip is engaged in the sale and distribution of ALIVA equipment and Haney Grouting Systems used for underground construction in eastern Canada. Some of the ALIVA equipment applies the shotcrete produced by either King Packaged Materials Company Division or its competitors. Minequip supplies technical/repair services to owners of such equipment.
11. The production employee, when there is one working for the Minequip Division fabricates shotcrete construction panels for underground construction in mines. The existing Minequip employee, when required, assists in repairing equipment used by King Packaged Materials Company. On average he works approximately four (4) hours per week for the King Packaged Materials Company Division.
12. King Packaged Materials Company Division is engaged in the manufacture and sale of industrial/mining products such as shotcrete which is used for in [sic] the construction of mine supports and underground buildings.
13. King Packaged Materials Company Division has plants located in the Town of Onaping Falls, in Brantford Ontario and Blaineville Quebec. Each plant has its own Plant Manager. The Plant Manager for the Town of Onaping Falls is C. Aulsebrook. The Plant Managers for Brantford and Blaineville are H. MacPherson Junior and J.F. Poulin respectively. The three Plant Managers report directly to Bruce Semkowski, Vice President, Operations of King Packaged Materials Company. The Corporate Management team of one Division does not participate in the management of any other Division except as stated in paragraph 30.
14. Two of the plants, not including the present application for certification, are unionized. The collective agreements for the Blaineville and Brantford plants specifically limit the scope of the Union's bargaining rights to employees of King Packaged Materials Company Division of K.P.M. Industries Ltd. The Blaineville plant employees in Quebec are represented by the United Steelworkers of America. The Brantford plant employees are represented by the Cement, Lime, Gypsum and Allied Workers Division, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local D 494.
15. None of the other divisions of K.P.M. Industries Ltd. operate within the geographic scope of the bargaining units pertaining to the King Packaged Materials Company plants in Blaineville or Brantford.
16. There are separate sales staff who work for the King Packaged Materials Company Division and Minequip Division in Onaping Falls. However, they share the same space and equipment. There are separate Sales Managers for both Ontario and Quebec who report to the Vice President of Sales (Consumer) for the King Packaged Materials Company Division. Industrial sales are handled by Vice President of Sales (Industrial) of that Division. There is also on King Packaged Materials Company salespersons working out of Burlington.
17. King Paving and Materials Company Division of K.P.M. Industries Ltd. is comprised of an asphalt plant located in Burlington, Ontario and King Truck Centre in Burlington, Ontario.
18. King Paving and Materials Company drivers and mechanics in the Truck Centre are all represented by the Teamsters Union. The bargaining unit description in the construction industry collective agreement is specifically limited to employees of King Paving and Materials Company. The Truck Centre Manager is John Perry who reports to King Paving and Materials Company Operations Manager John Hutter.

19. The drivers are engaged in transporting asphalt from the Asphalt plant to various construction sites at which King Paving and Materials Company employs a number of construction workers. The shop employees are engaged in repair of trucks and construction equipment used by the Company.
20. Employees of the Asphalt plant are engaged in loading of asphalt materials.
21. K.P.M. Industries Ltd. has a collective agreement with the International Union of Operating Engineers Local 793. This collective agreement covers all employees of K.P.M. Industries Ltd. in a specific geographical scope and is not limited to a Division of the Company. There is also a collective agreement between the Metropolitan Toronto Road Builders Association and A Council of Trade Unions. The membership roster states "King Paving & Materials Company/K.P.M." but the parties are unable to determine if the membership is with K.P.M. Industry Ltd. or the Paving Division. There is also a collective agreement between The Hand Association of Sewer, Watermain and Road Contractors and the Labourers International Union of North America Local 837. King Paving & Materials Company is a member of the Hand Association of Sewer, Watermain and Road Contractors.
22. There is no intermingling of employees of King Paving and Materials Company, King Packaged Materials Company and Minequip (with the exception noted above, specific to the Town of Onaping Falls). There has not been, and is currently no transfer of bargaining unit work between the King Paving and Materials Division and King Packaged Materials Division.
23. The K.P.M. Industries Ltd. head office is in Burlington, Ontario.
24. Employees of the respective divisions all report to their respective plant of [sic] division managers.
25. The pay stubbs [sic] for employees of all three divisions refer to K.P.M. Industries Ltd.
26. The three divisions have separate invoices and packing slips (the latter are not required for King Paving and Materials Company).
27. The "King" name appears on the packaging for King Packaged Materials Company products. There is no reference to K.P.M. Industries Ltd. on such packaging.
28. The trucks used by King Packaged Materials Company identify "Sakrete" which is the concrete product produced by King Packaged Materials on the side. The King Paving and Materials Company trucks refer to King Paving and Materials Company. Minequip has one truck which has Minequip on the side. There are no vehicles owned by K.P.M. Industries Ltd. which have same identified on the vehicle but all trucks of the Divisions are leased by K.P.M. Industries Ltd.
29. The three Divisions of K.P.M. Industries Ltd. have historically generated their own profit and loss statements for the purpose of determining their results within the Corporation. King Paving and Materials Company and King Packaged Materials Company have done so since 1989, when the latter was made a separate Division of the Corporation. Minequip has done so since it was purchased in 1994. The Vice President of King Packaged Materials Company and King Paving and Materials Company and the General Manager of Minequip report their results to the president separately, on a monthly basis, and maintain separate operating statements and financial statements for the President. However, there is only one single financial statement for income tax purposes.
30. The employees of the respective Divisions all report to their respective Plant or Division Managers. Human resources such as hiring, firing and staff levels are handled separately for each Division by the Management Staff of the respective Division with the following exception. Joe Deroche (bargaining unit employee) was interviewed by Dennis Wrixon, General Manager of Minequip to work for Minequip and there was no position available in Minequip. Wrixon told Deroche that we want you to work for the Company and sent

him to Aulsebrook (Plant Manager for King Packaged Materials Company) for a job in the plant. Wrixon recommended Deroche to Aulsebrook for hiring. Aulsebrook interviewed him again and had the final say as to whether or not he worked in the plant.

### Submissions of the Parties

4. The company argues that the scope of the union's bargaining rights should be limited to the divisions currently operating in Onaping Falls. It claims this can be accomplished either by using the term "c.o.b." or by referring specifically to the divisions. It submits this is appropriate because the bargaining unit should reflect the union's membership at the time of the vote and because the company holds itself out to the public in Onaping Falls as the two divisions rather than as K.P.M. Industries Ltd. It argues that one of its three divisions, King Paving Materials, does not operate in Onaping Falls and its employees should not be included in the bargaining unit should it commence to do so. It notes that the three divisions have separate corporate management structures, separate human resources for the most part, and even the two divisions it is agreeing to include in the bargaining unit have very little overlap of functions.

5. The company asserts that the bargaining unit in Onaping Falls should reflect bargaining units at its other locations in which employees working at King Packaging and King Paving have been represented by different trade unions. Collective bargaining in its non-construction sector has generally been along divisional lines. The company's principal concern is that if it sets up another division, including the paving division, in Onaping Falls it should not be covered by the collective agreement. The company's paving division collective agreements in other geographical areas are construction agreements as the majority of the work of that division is in the construction sector. (The Board notes, however, that the agreed Statement of Facts do not specify how much of the work done by King Paving is construction work.) King Paving has three functions according to the company: road construction, trucking asphalt materials, and a truck centre involved in maintenance and repair of the division's trucks and constructive equipment. The company claims that there is good reason in these circumstances to limit the bargaining unit description to King Packaging and Minequip and no statutory prohibition against doing so. If a King Paving division did open in Onaping Falls the employees would not necessarily share a community of interest with the employees of the other two divisions. It notes that the Act does not prohibit bargaining units restricted to divisions and that section 1(1) of the Act specifically refers to "an employer unit, or a plant unit or a subdivision of either of them".

6. The company argues that the union's fears with respect to the stability of its bargaining rights are unfounded as there is no evidence that the company has ever diverted work from one division to another to evade bargaining rights nor is there any evidence that it intends to change its corporate structure. On the other hand, if the geographic scope covers all divisions, the union's bargaining rights may be expanded without testing the wishes of employees in the new division.

7. The company refers to the following decisions of the Board: *Beatrice Foods (Ontario) Limited*, [1982] OLRB Rep. June 815; *Co-Steel Recycling*, [unreported OLRB decision dated March 29, 1995, File No. 4331-94-R]; *Thomson Newspapers Company Limited*, [unreported OLRB decision dated October 18, 1991, File No. 2139-91-R]; *Conseil scolaire de langue française d'Ottawa-Carleton*, [1989] OLRB Rep. June 575; *Metroland Printing, Publishing & Distributing*, [1991] OLRB Rep. Sept. 1069; *Cara Operations Limited*, Board File No. 2658-91-R, February 4, 1992 (unreported).

8. The company argues that the cases relied upon by the union are distinguishable and were all decided before the amendments to the *Labour Relations Act, 1995* which promote greater workplace democracy.



9. The union argues that the Board should continue its usual practice and certify it as the bargaining agent for all of the employees in the municipality and name the sole legal entity, KPM Industries Ltd., as the employer. It submits that in this case that is an appropriate bargaining unit. There is no need to distinguish between two operations by certifying a bargaining unit by a street address in this case. The union disagrees that the amendments to the *Labour Relations Act, 1995* should motivate the Board to change its jurisprudence in this area.

10. The union denies that the Board should be concerned about the wishes of employees who may be hired after certification as it is always the case that employees hired after certification are included in the bargaining unit even though they have not had an opportunity to vote.

11. The union relies upon the Board's decision in *Hunter Douglas Canada Limited*, [1985] OLRB Rep. April 535 and notes that that decision suggests there is a risk in granting divisional bargaining rights because a company can change its internal structure more easily than it can move to another location. In this respect the union also relies upon the Board's decision in *General Signal Limited*, [1994] OLRB Rep. March 242.

12. The union also denies that the separate management structure of the three divisions should lead the Board to restrict the geographic scope to the two divisions since the company is agreeing that it is appropriate to include two of those divisions in the same bargaining unit. If the company is not claiming that any labour relations harm flows from including the two divisions in one unit how can it claim that harm flows from the possibility that the company may open a third division?

13. The union denies that the fact that three of the company's other collective agreements refer to divisional bargaining units should be given any weight in the Board's determination. The evidence only shows that the parties have agreed to that scope in their collective agreements. There is no evidence as to what the Board's original certificate said. The union denies that the fact that its collective agreement with the company in Quebec limits the scope of the bargaining unit to a division, bars it from seeking an all employee unit in any other circumstances. According to the union, this case is distinguishable from the *Cara Operations* decision, *supra*, in which the employer had twenty collective agreements and all were certified by division. The facts of this case are also distinguishable because the company has agreed to include two divisions in the same bargaining unit.

14. The union also argues that the Board cannot find that there would be no community of interest between the present employees and any future employees of another division without any evidence to that effect. Furthermore, there can be no such evidence about hypothetical employees of a hypothetical division. The union denies that the fact that some of the work done by the King Paving division is in the construction sector has any relevance to this determination. It denies that there would be a lack of community of interest between the current employees and any such construction employees.

### Decision

15. In non-construction applications for certification, the Board's usual approach to bargaining unit descriptions is to certify a union for all employees of an employer in a municipality in circumstances where the company has only one operation in that municipality. The effect of this approach is that if the company opens another operation or expands its existing operation within that municipality the new employees will be included in the existing bargaining unit. The reasons for this approach are articulated in *Hunter Douglas, supra*, as follows:

7. In balancing the interests of present employees against the possible interests of unforeseen future employees, the balance is struck in favour of addressing the interests of present employees in the stability of their bargaining relationship with the respondent. With respect to the respondent's arguments that the appropriate bargaining unit be defined with respect to one of its divisions, the

Board is not persuaded that its arguments have any merit. The respondent acknowledges that the bargaining unit ought to be described without reference to a municipal address in the interests of stability of bargaining rights while arguing for the reference to one of its divisions in defining the appropriate bargaining unit.

8. In our view, the arguments of the respondent must fail. The inclusion of a reference to a division of the respondent in the appropriate bargaining unit is a destabilizing factor in bargaining rights. It is arguably open to the respondent to change its internal corporate structure and change and/or substitute a different division in its present premises in Mississauga. It is arguably even easier to effect a change in the internal corporate structure of the respondent than it is to relocate to a new address in Mississauga. For these reasons the appropriate bargaining unit is to be described without reference to a division of the respondent in the City of Mississauga.

16. However, the circumstances of this case are somewhat unusual because the company has a third division which could conceivably commence operation at some future time in the Town of Onaping Falls and which does construction work. The union's view is that if that were to happen those employees would be included in its bargaining unit and presumably covered by its collective agreement. The company is concerned that that would be the case. The issue of whether new construction employees of a company would be included in an existing "all employee" non-construction bargaining unit has not been directly addressed in a prior decision of the Board. However, in a recent decision of the Board, *Alcan Aluminium Limited* (Board File Nos. 2736-96-R, 2743-96-R, June 9, 1997, unreported) [now reported at [1997] OLRB Rep. May/June 305], the Board found that construction employees of the company were not included in existing, primarily non-construction, bargaining units except to the extent that the parties had manifestly included them by their conduct. In the course of that decision the Board made the following comments about the "differences" between the construction and non-construction sectors.

29. The Board has a discretion in dealing with bargaining unit description issues, whether these issues relate to questions of geographic scope or other matters. This is appropriate because it permits the Board, as an expert labour relations tribunal, some latitude in structuring appropriate bargaining units. However, the Board's discretion is directed by the Act, and the degree of discretion which the Board has is not the same in every case. It is axiomatic that the discretion which the Board has in a particular case depends upon the direction which the Act provides.

30. For instance, the Act has long provided that: "upon an application or certification, the Board shall determine the unit of employees that is appropriate for collective bargaining ..." The Board has always considered that trade unions are generally able to make their own assessment of the bargaining unit which is appropriate for their collective bargaining purposes. Accordingly, in order to give trade unions the appropriate leeway in selecting their bargaining units, the Board has treated the legislative direction to determine "the appropriate bargaining unit" to be a direction to determine a bargaining unit which is *an* appropriate one in the particular application, rather than to try to determine the *most* appropriate bargaining unit. In this respect then, the Board exercises a very broad discretion indeed.

31. When it comes to "craft" units (section 9(3)), units of professional engineers (section 9(4)), or units consisting solely of dependent contractors (section 9(5)), the Board is given some more specific direction in terms of the employee composition of bargaining units, but still retains a broad discretion with respect to geographic scope.

32. In that latter respect, sometimes the Board will restrict a bargaining unit to a particular location, particularly in the retail industry. But that is not the Board's general practice. Seventeen years ago, in *York Steel Construction Limited*, [1980] OLRB Rep. Feb. 293, the Board described its practice regarding the geographic scope of bargaining units as follows:

6. The Board in *Wix Corp. Ltd.*, [1975] OLRB Rep. Aug. 637 canvassed in some detail the Board's practice with respect to defining geographic limitations in the appropriate bargaining unit. *Apart from the construction* and perhaps certain service industries, the

Board's policy, where the employer has employees at only one location within a municipal area, is to describe the bargaining unit in terms of the municipality itself (*Perimeter Industries Limited*, [1973] OLRB Rep. March 174). On occasion the Board will expand its definition of the bargaining unit to encompass an area greater than a single municipality (see *The Board of Health of the York-Oshawa District Health Unit*, [1969] OLRB Rep. Feb. 1178; *The Adams Furniture Company Limited*, [1975] OLRB Rep. June 491; and note as well the Board's normal unit of "the Municipality of Metropolitan Toronto"), but is reluctant to do so in the absence of compelling reasons (*Wittich's Bread Limited*, [1969] OLRB Rep. Jan. 1019; *Del Zotto*, [1972] OLRB Rep. June 637 and *Canada Safeway Limited*, [1972] OLRB Rep. Mar. 262). The primary reason for this policy of municipality-wide bargaining units is the Board's concern for stability of bargaining rights; i.e., the union's bargaining rights will not be affected by a subsequent move of the employer's operation to some other location within the same municipality. On the other hand, actual accretions to the employer's operations within the municipality, such as a second or third plant, will automatically be covered by the union's certificate. To this latter extent, the right of self-determination of a bargaining agent by the employees at these new locations is compromised, in favour of the over-riding concern for stability of bargaining rights.

[emphasis added]

33. In *York Steel*, *supra*, the Board noted that things were different in the construction industry. Indeed, the construction industry has always been "different". In my March 10, 1997 decision herein, and also in *Ontario Hydro*, [1997] OLRB Rep. Jan./Feb. 82, I observed that the differences between construction and non-construction labour relations have been legislatively recognized in the Act since 1962 when the *Labour Relations Act, 1961-62* was passed. In that respect, at paragraphs 26 to 28 of the *Ontario Hydro*, *supra*, decision, I wrote that:

26. Primarily in response to the "Goldenberg Report" in 1962, the *Labour Relations Amendment Act, 1961-62* was passed, and for the first time, the Act included provisions which recognized that construction labour relations were "different". For the first time, a separate part of the Act was devoted to the construction industry. It consisted of only six sections but included a definition of "trade union" in exactly the same words as are found in section 126 today, provided for certification by geographic area rather than by project or location, contained notice to bargain and conciliation provisions, and included a provision relating to when a termination application could be brought.

27. Since then, the evolution of the Act has continued to include changes reflecting an ever increasing awareness of the differences between construction and non-construction labour relations, and the need to address the peculiar needs of the construction industry directly in the Act. Construction industry certification proceedings became more expedited. In 1962, provision was made for a construction division of the Board. In 1970, in an attempt to equalize bargaining power in the construction industry, the Act was amended to establish an accreditation system for employers organizations.

28. In response to the "Franks Report", the Act was amended in 1977 to provide for a comprehensive scheme of province-wide bargaining for the traditional building trades unions in the industrial, commercial and institutional ("ICI") sector of the construction industry. This scheme was designed to encompass the unions and employers which dominated labour relations in the ICI sector of the construction industry. Further amendments, which came into effect on May 1, 1980, extended ICI bargaining rights to the entire province, prohibited selective strikes and lock-outs, and established a ratification procedure for the provincial ICI agreements.

(See also the comments of the Divisional Court in that respect in *Re International Union of Operating Engineers and Traugott Construction*, (1984) 6 D.L.R. (4th) 122).

34. As I observed in the March 10, 1997 decision (at paragraph 50) herein, one result of all this is that we have in this province a certification scheme for the construction industry which is both separate and quite different from the one established for non-construction industries. The differences



appear both in the manner in which applications for certification are dealt with, and more specifically in how bargaining units are described.

35. While there are exceptions, particularly when it comes to craft or "craft-like" units, non-construction bargaining units are generally described in terms of "all employees save and except" perhaps certain kinds of employees, and persons at or above the first level of management (which is redundant for purposes of Board proceedings since persons who are "management" are not "employees" for purposes of the Act but is included in order to give greater clarity to bargaining unit descriptions by identifying the first managerial level).

36. On the other hand, construction bargaining units are described in terms of specific trades or crafts (except in the case of construction operating engineers where the bargaining unit is described in terms of the construction work they engage in, and which work defines the trade) and include "working foremen". Typically, construction collective agreements cover specific employees defined by the trade they work at and assert a trade work jurisdiction for these employees. An important difference (for these applications) is immediately apparent: construction bargaining units are specifically restricted to construction employees, but non-construction bargaining units are not. Although none come immediately to mind, there may be some "non-construction" collective agreements which specifically exclude construction work or employees. But the vast majority do not, and I am unaware of any Board determined bargaining units which specifically do so. Indeed, this is an issue which the Board is typically not asked to address. Nor is it apparent that parties to a non-construction application for certification consider whether the employer has employees who regularly or periodically perform construction work to the extent that on the Board's test they are construction employees, either normally or from time to time. Accordingly, whether "all employees" means precisely that; that is, all employees regardless of the work they perform and subject only to the express exclusions; or whether a non-construction bargaining unit presumptively excludes any construction employees of an employer, is not an issue which has been directly addressed by the Board. (Nor is it raised as an issue in this case).

37. Another difference is the one suggested in the *York Steel, supra*, decision; that is, in the geographic scope of bargaining units. As a general matter, the geographic scope of non-construction bargaining units is narrower than that of a construction industry bargaining unit. Again, there are exceptions (occasional teacher and security guard units come to mind), but the largest geographic area covered by a non-construction bargaining unit is generally a municipal area; that is, a local political division. It can be much smaller, but if it is it tends to be restricted to a particular municipal location or address (as in the case of retail or service industry employers which have more than one location within an otherwise appropriate municipal area in circumstances where it is not appropriate, either because the parties agree or otherwise, to include all of these in the bargaining unit). In contrast, construction industry bargaining units cover much larger geographic areas. Indeed, where a construction trade union (that is a "trade union" within the meaning of section 126 of the Act) makes an application for certification in the construction industry (i.e. an application for certification within the meaning of sections 128 and 158), section 128 of the Act directs that the Board "determine the unit of employees that is appropriate for collective bargaining by reference to a geographic area and it shall not confine the unit to a particular project" [emphasis added]. Further, the Act has created a provincial bargaining structure for the industrial, commercial and institutional sector of the construction industry such that a construction trade union which is an affiliated bargaining agent of a designated employee bargaining agency (as defined in the Act) is entitled to a province-wide bargaining unit in the industrial, commercial and institutional ("ICI") sector. Indeed, such a trade union has no choice in that respect. If it wishes to obtain ICI bargaining rights, it must apply for a province-wide bargaining unit. Even for construction trade unions which are not affiliated bargaining agents, or in applications for certification (or voluntary recognition agreements) which do not apply to the ICI sector, the geographic scope of a construction bargaining unit is defined in terms of the 32 geographic areas which have been established by the Board in that respect (or if the job site is in one of the so-called "white areas" in terms of the geographic township the site is in and the 8 geographic townships surrounding it). There is a great deal of variation in the size of these "Board areas", but all of them are significantly larger than the typical non-construction bargaining unit geographic area. Some Board areas are quite large, and all of them include more than one or parts of more than one municipal or other political unit. Indeed, these Board areas were established having regard primarily to patterns of collective bargaining and local geographic jurisdictions, without more than a very general regard to municipal or other political boundaries.

38. Until recently, none of this presented any significant problems, partly because of the historical separation between construction industry and non-construction trade unions in terms of the employees they seek to represent and the work these employees perform, partly because of the amount of construction work performed under non-construction collective agreements has tended not to be significant in the overall scheme of things (the Ontario Hydro situation may be the most obvious exception to this), and partly because until recently the overall employment picture in the construction industry has been good. Nevertheless, the line between non-construction and construction bargaining rights is neither narrow nor clear, and the two regimes have co-existed somewhat uneasily.

39. With this in mind, I turn first to the assertion by Alcan (also made in the alternative by the Steelworkers and Machinists) that the bargaining units in these applications should be described in terms of the Chemicals' division rather than in terms of Alcan. In that respect, the question is this: is it appropriate to restrict the bargaining rights which are the subject of these applications to construction employees who work in or at a plant of the particular division where the construction work in which the employees who are the subject of these applications were engaged at the time the applications were made, along with a smaller physically separated plant in the same division in which no construction work was being carried on at the time?

40. *Prima facie*, it is not appropriate to do so. *Prima facie* it is appropriate to describe a bargaining unit in terms of the employer party as such and not in terms of some part of the employer.

41. Nor is the Board satisfied that there is any cogent reason to describe the bargaining unit in terms of a part of Alcan, namely its Chemicals division, in these applications.

17. The gist of the Board's comments above is that labour relations in the construction industry are governed to a large extent by a different statutory scheme than other sectors covered by the *Labour Relations Act, 1995*. Would it therefore be appropriate for this bargaining unit description to potentially include construction employees of a construction division of the company? The Board sees no reason why it would not be appropriate. As the Board pointed out in *Ontario Hydro*, [1997] OLRB Rep. Jan./Feb. 82 and *Alcan Aluminium, supra*, construction employees can be represented by a non-construction collective agreement. There are many such situations in Ontario, for example, at Ontario Hydro and at large manufacturing facilities such as those operated by motor vehicle manufacturers. Further, the Board does not engage in speculative exercises when it deals with applications for certification.

18. In this case, the company does not have, and may not ever have, construction workers employed in the Town of Onaping Falls. There is nothing which suggests that the division of the company known as King Paving and Materials Company has ever operated in the Town of Onaping Falls, or that there are any plans for it to do so. Nor is there anything which suggests that the company has an actual intention to establish another "division" in Onaping Falls, either to perform construction work or for any other reason. In short, there is nothing which suggests that the bargaining unit proposed by the union is not an appropriate one. The mere fact that it does not reflect the company's internal structure, or that it might otherwise affect operations which have not even been conceived does not raise any cogent reason to deny the union the bargaining unit it seeks. There is nothing before the Board in this case which raises any of the issues or concerns surrounding the interface between the construction and general provisions of the Act which the Board has struggled with recently in cases like *Ontario Hydro, supra*, and *Alcan Aluminium, supra*. If such issues arise in the future, they can be dealt with by the parties themselves, or addressed in the appropriate forum.

19. The company argued that potential future employees of its paving division would not share a "community of interest" with the employees in the bargaining unit. The Board's approach is to consider the factor of "community of interest" in terms of whether the composition of the bargaining unit is appropriate or is likely to cause serious labour relations problems. The Board cannot determine whether the inclusion of certain kinds of employees might cause serious labour relations problems when the relevant employees do not yet exist and may never exist. In such circumstances, the Board

has determined that on balance it is more important to certify a union for a municipal-wide unit and thereby protect its bargaining rights than to limit those rights out of concern that some employees might one day be included in the unit who might not share a "community of interest". And again, the Board notes that employees who perform construction work are included in many non-construction collective agreements in the Province.

20. In the circumstances of this case, therefore, the Board is satisfied that the bargaining unit description proposed by the union is an appropriate one. It is consistent with the Board's general approach to the issue and there is no cogent reason to restrict the bargaining unit as proposed by the company. The Board finds that:

all employees of KPM Industries Ltd. in the Town of Onaping Falls, save and except Managers and persons above the rank of Manager and office, clerical and sales staff,

constitute a unit of employees of the responding party appropriate for collective bargaining.

21. A final certificate will issue to the applicant for the bargaining unit described in paragraph 20.

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### **0245-97-R Teamsters Local Union No. 419, Applicant v. Martha's Garden Inc., Responding Party**

**Bargaining Unit - Certification - Employer - Practice and Procedure - Prior to holding of representation vote, employer taking position that certain disputed individuals ought to be included in bargaining unit and union taking position that such individuals ought to be excluded - After ballots (including those of disputed individuals) cast and counted, both union and employer changing positions and purporting to adopt position formerly advanced by the other - Employer subsequently asking Board to direct new vote and to find that two bargaining units (one excluding the disputed individuals and one composed exclusively of the disputed individuals) appropriate - Employer asserting that another entity employing the disputed individuals - Board declining to direct second vote - Board finding disputed individuals to be employed by the employer and not by the other entity - Board also finding that, in the circumstances, employer ought not to be permitted to raise new bargaining unit issue at this stage of proceedings - Board, in any event, not persuaded that applicant's proposed bargaining unit not appropriate - Certificate issuing**

**BEFORE:** *Bram Herlich*, Vice-Chair, and Board Members *S. C. Laing* and *H. Peacock*.

**APPEARANCES:** *Mike McCreary* and *Paul Dunne* for the applicant; *Walter Thornton*, *Gus Arrigo* and *Justin Diggle* for the responding party.

### **DECISION OF THE BOARD;** September 2, 1997

1. This is an application for certification in which a representation vote has been held in accordance with the direction of the Board (differently constituted) dated April 24, 1997. Although there have been a varying number of issues between the parties at different times in the proceedings, by the time the matter came on for hearing, only one central issue remained. There was, however, a proliferation of manifestations of that single issue before the Board.

2. There is a group of individuals who, although they work together, side by side, performing similar functions to employees paid directly by the responding party (the "employer" or "Martha's"),



are paid for their work by an entity other than Martha's (namely by Reliable Employment Services Inc. ("Reliable"))-hence we shall refer to this group, as the parties did, as the "Reliable employees").

3. The parties demonstrated breathtaking flexibility in their respective abilities to alter their positions in respect of the Reliable employees. There can be no doubt, and counsel, to their credit, did not assert otherwise, that principles took a back seat to strategic maneuvers in determining the various shifts in the parties' positions.

4. The applicant (also referred to as the "union") initially proposed a fairly standard all employee unit. Subject to certain ultimately irrelevant exceptions, the employer, in its response, essentially adopted the unit proposed by the applicant *but* proposed a clarity note to specifically indicate the inclusion of the Reliable employees in the bargaining unit. In preparing the voters' list in advance of the balloting, the employer thus included and the union objected to the inclusion of the Reliable employees.

5. The vote was held on April 28, 1997. Twenty-five out of the twenty-six persons on the voters' list (which, of course, included the challenged Reliable employees) presented themselves at the poll and were given ballots. In the result, twelve ballots were marked in favour of the union, eleven were marked against and two were spoiled. Thus, a majority of the total number of ballots cast were in favour of the union. In view of the dispute regarding the Reliable employees, however, their ballots were segregated and counted apart. It was thus possible to further subdivide the results: despite the total majority in favour of the union, a majority of the Reliable employees voted against certification. The vote results prompted the parties to re-evaluate their positions.

6. Indeed, by the time the period for making post vote representations had elapsed, each of the parties had purported to adopt the position formerly advanced by the other. The employer now "agreed" that the Reliable employees ought not to be included or viewed as employees in the bargaining unit - the likely practical result of that "concession" to the union's position would have been that the Reliable employees (whom the employer had formerly claimed as its own) would not have been covered by the certificate whose issuance seemed imminent. The union, on the other hand, now "agreed" that the Reliable employees were employees of Martha's to be included in the bargaining unit. The likely result of the union's "concession" would have been to secure bargaining rights in respect of the Reliable employees (whose eligibility to vote the union had previously challenged and a majority of whom had voted against the union).

7. In that context, the first issue with which the Board was asked to deal was whether there was still an issue in dispute between the parties regarding the Reliable employees.

8. Essentially, the employer argued that since it had accepted the union's position in writing on April 28, 1997 and that the union had not accepted the Martha's position in writing until May 7, 1997, some nine days later and on the last day of the "objection period", that the Board should conclude that the issue of the Reliable employees had been resolved. We should note that the union asserted that, on the day of the vote, it had notified the Board orally, through the Labour Relations Officer who had conducted the vote, that it was withdrawing its challenges to the Reliable employees. That assertion was disputed, but for the purposes of our ruling it was unnecessary to determine. We recessed to consider the submissions of the parties and delivered the following unanimous oral ruling:

For reasons which may be elaborated upon in a subsequent decision, the Board is satisfied that there remains an issue in dispute between these parties, namely whether the individuals referred to as the "Reliable employees" are employees of Martha's and whether a clarity note to that effect ought to be included.

Neither party, strictly speaking, advocates a "he who is swiftest wins the race" approach in these circumstances. Essentially, the employer argues that (and we have entirely discounted any potential evidence regarding discussions between Mr. Dunne and the Labour Relations Officer for this purpose) the union merely waited too long to change its position as the employer had done some seven working days earlier.

In the circumstances, including the fact that the union's submissions of May 7th were within the time period contemplated by the Board, we are satisfied that the union had the same option as the employer had exercised seven days earlier i.e. to change its position.

We are thus satisfied that there remains an issue to be determined between the parties.

9. The Board's oral ruling merits one significant clarification. The reference to parties' abilities or entitlement to "change their position" needs to be read fairly narrowly. The two parties here did not merely change their positions, they each adopted the position formerly held by the other. Thus, while the positions adopted were new to the parties adopting them, they were not new to the process. These were positions that had already been articulated. This was not a situation where a party apparently losing or winning the representation vote suddenly comes up with challenges or additions to the voters' list not previously raised by anyone. That kind of situation is to be readily distinguished from the instant one which some might cynically describe as the parties racing, for reasons no doubt closer to self-interest than epiphany, to embrace each other's position.

10. Following the delivery of this ruling, the parties took some time to consider their positions. When the hearing reconvened the parties advised that they would draft and file a statement of agreed facts as well as written submissions in relation to the outstanding issue regarding the Reliable employees. There were, however, two further issues the parties wished the Board to consider and, if possible, rule upon at the hearing. First, the employer asked that a new representation vote be ordered. Second, the employer asked that it be permitted to advance a new position with respect to the appropriate bargaining unit. Martha's submitted that, in the event the Board determined that the Reliable employees were indeed employees of Martha's for the purposes of this application, the Reliable employees did not share a community of interest with the other employees of Martha's. Consequently we were urged to find that two separate bargaining units - one for the Reliable employees and the other for the remaining Martha's employees - would be the appropriate bargaining units. Martha's also asserted that the facts upon which it would rely for advancing this position were the identical facts which would be required to dispose of the issue of whether the Reliable employees are employed by Martha's.

11. With respect to the request for a further representation vote, the employer argued that employees ought to have explicitly been made aware of the applicant's position regarding the Reliable employees prior to the vote. The Board's prior decision and consequent notice of vote described an "all employee" voting constituency without any reference to the clarity note proposed by the employer.

12. It is true that in striking voting constituencies, the Board generally tends to opt for the widest reasonable constituency so as to preserve the potential utility of the vote. Actual bargaining unit determinations, certainly when they are disputed, are not made until after the representation vote has been taken. Where there is a clear dispute between the parties regarding the bargaining unit description, the parameters of that dispute may well be identified in the Board's decision directing the vote (e.g. where a party seeks the exclusion of an identifiable group of employees, such as part-time employees or office and clerical employees, from the bargaining unit). The Board, however, does not, in advance of the vote, typically outline in either its decisions or postings the parameters of disputes regarding employee status or voter eligibility. The latter sorts of issues are commonly referred to as "list" issues to distinguish them from bargaining unit issues. And while the dividing line between these types of issues may not always be crystal clear (a bargaining unit dispute will typically result in corresponding list issues though not necessarily the reverse), the Board observed and the parties acknowledged, at the

commencement of the instant hearing, that the issue (if there was one) in this case was essentially a list issue: i.e. are the Reliable employees employed by Martha's? If they are, they would, barring some specific bargaining unit exclusion which no one in this case had proposed, be included in an all employee bargaining unit.

13. Does the fact that there was no explicit notice of this list issue to affected employees prior to the taking of the vote or the fact that the employer's proposed clarity note was not included in the voting constituency mean that a new vote ought to be directed? We think not.

14. No employee or person claiming any entitlement to vote has taken the opportunity available to raise any concern. With but a single exception, each and every person any party argued was entitled to vote marked a ballot. Further, it is frankly difficult to know or appreciate what difference greater employee knowledge about the position of the union (or the employer) about the Reliable employees might have made to the exercise of employee franchise. Finally, a certain irony in this case flows from the argument that employees ought to have had a better idea of the union's (or the employer's) position. Given the parties' demonstrated ability to reverse ground, one might be forgiven the sensation of trying to hit a moving target. In all of these circumstances, we were not persuaded that it would be appropriate to and we declined to direct the taking of a second representation vote.

15. With respect to the second issue, the union argued that the employer ought not to be permitted to raise a new issue or to take a new position with respect to the appropriate bargaining unit at this stage of the proceedings.

16. The Board reserved its ruling with respect to that issue. The parties then agreed on a schedule for the filing of agreed facts and submissions with respect to the Reliable employees issue. That process has now been completed. There are thus, potentially, three issues with which the Board may have to deal. First, are the Reliable employees employed by Martha's? If so, ought the employer to be now permitted to advance an alternative position with respect to the appropriate bargaining unit(s)? Finally, what is/are the appropriate bargaining unit(s)?

17. The parties filed the following Statement of Agreed Facts:

#### STATEMENT OF AGREED FACTS

##### REGARDING "WHO IS THE EMPLOYER" SEPARATE BARGAINING UNITS

For the purposes of this Statement, persons paid directly by Reliable Employment Services Inc. ("Reliable") shall be referred to as "the Reliable employees", and persons paid directly by Martha's Garden Inc. ("Martha's") shall be referred to as "the Martha's employees". "The workplace" refers to the workplace at 475 Horner Avenue, where Martha's is located.

- 1) The Reliable employees and the Martha's employees work together, side by side, perform similar functions, and share the same change and lunch rooms at the workplace.
- 2) The shortest duration of employment of a Reliable employee at the workplace as of the date of the Application for Certification was four (4) months and some Reliable employees had worked continuously at the workplace for more than two (2) years.
- 3) Martha's determines and communicates the work schedule to the Martha's and Reliable employees, including vacation and holiday scheduling, based on the available or required work. In the event of absences from scheduled work, some Reliable employees contact Reliable, whereas others contact Martha's. Martha's preference is that the Reliable employees contact Martha's directly.
- 4) The Reliable employees are paid directly by Reliable, including wages, vacation and statutory holiday pay. Martha's pays fees to Reliable in relation to the services performed



at the workplace by the Reliable employees, and Reliable retains a portion of these fees. Martha's is not consulted concerning the wages that are paid to the Reliable employees. There is a relationship between the wages paid by Reliable to the Reliable employees and the fees paid by Martha's to Reliable.

- 5) The payment of wages to the Reliable employees is normally effected by a representative of Reliable attending at the workplace and delivering cheques payable to the Reliable employees to a member of Martha's management, who distributes the cheques to the Reliable employees at the workplace.
- 6) Martha's pays Employer Health Tax and Workers' Compensation premiums in relation to the Martha's employees, whereas Reliable pays such premiums in relation to the Reliable employees.
- 7) Reliable provides an orientation of the workplace facilities at the workplace to the Reliable employees prior to or at the start of work at the workplace, whereas Martha's management and/or employees train(s) such employees in relation to the operation of machines and equipment at the workplace and other aspects of the performance of work.
- 8) Day-to-day supervision of the Reliable employees at the workplace, including the assignment of work, is provided by Martha's management and/or employees.
- 9) In the event of the termination of the employment of a Reliable employee, Reliable would be notified, in advance, by Martha's, although the decision would in effect be made by Martha's. There have been occasions when Martha's has imposed discipline, falling short of the termination of employment, in relation to a Reliable employee, without Martha's contacting Reliable, in advance, in relation to such disciplinary action.
- 10) Reliable does not supply any tools or equipment in relation to the Reliable employees. Uniforms and other work-related clothing and tools are supplied to the Reliable employees by Martha's.
- 11) Martha's pays the premiums or otherwise provides the following group benefits on behalf of the Martha's employees:
  - a) Group Insurance (Aetna)
    - . Life, A D & D
    - . Long Term Disability
    - . Health Care benefits
  - b) Self-Insurance (Martha's)
    - . Extended Health Care
    - . Dental

No such payments or benefit coverage is/are made or provided by Martha's on behalf of the Reliable employees. Martha's has no knowledge regarding whether Reliable pays group insurance premiums in relation to any or all of the Reliable employees.

18. In support of their respective submissions, the parties referred us to a number of cases including: *Templet Services*, [1974] OLRB Rep. Sept. 606; *The Tower Company*, [1979] OLRB Rep. June 583; *Dare Personnel Inc.*, [1995] OLRB Rep. July 935; *Nichirin Inc.*, [1991] OLRB Rep. Jan. 78; and *Sylvania Lighting Services*, [1985] OLRB Rep. July 1173.

19. The Board's jurisprudence in this area is neither complicated nor controversial: the parties referred to different Board decisions which all apply essentially the same principles which have been

set out in many cases including *K Mart Canada Limited*, [1983] OLRB Rep. May 649 at paragraph 37 (cited in *Nichirin Inc.*, *supra*; see also *York Condominium Corporation*, [1977] OLRB Rep. Oct. 645):

37. The criteria which the Board considers helpful in determining which of two (or more) entities is the employer for purposes of the *Labour Relations Act* include the following:

- (1) the party exercising direction and control over the employees;
- (2) the party bearing the burden of remuneration;
- (3) the party imposing discipline;
- (4) the party hiring the employees;
- (5) the party with authority to dismiss the employees;
- (6) the party who is perceived to be the employer by the employees; and
- (7) the existence of an intention to create the relationship of employer and employee.

(See, for example, *Windsor Airline Limousine Services Limited*, [1981] OLRB Rep. March 398; *Sutton Place Hotel*, [1980] OLRB Rep. Oct. 1538; *Toronto Arts Productions*, [1980] OLRB Rep. Sept. 1556; and *The Tower Company (1961) Ltd.*, [1979] OLRB Rep. June 583; and the numerous authorities cited therein.) The cases have generally not assigned any particular order of priority to those factors, but rather have tended to indicate that the weight to be given to each factor must depend upon the facts of each case. However, the Board has tended to attach considerable significance to “overriding control” in determining which of two or more entities is the employer of certain persons. Moreover, the Board has consistently found that neither private arrangements as to who is the employer, nor administrative paymaster arrangements, are indicative of the true employer.

20. Having reviewed the agreed facts, the caselaw referred to and the submissions of the parties, we are satisfied that the Reliable employees are indeed employees of Martha’s. It is clear that a majority of the factors set out in *K Mart* above favour this conclusion. It was not seriously disputed that Martha’s is the party exercising direction and control, imposing discipline and having the authority to dismiss. Neither do any of the other factors point unambiguously to the conclusion that Martha’s is not the employer.

21. While the Reliable employees’ pay cheques undoubtedly are drawn on a Reliable account (though delivered by Martha’s), Reliable can be viewed as providing a payroll service - the quantum of the fees charged to Martha’s by Reliable is a direct function of the wages paid to the Reliable employees. Thus, Martha’s can be seen as the party bearing the ultimate burden of remuneration (plus the consequent fees). While Reliable may well effect the initial hiring of the Reliable employees, it is Martha’s who must ratify that selection by accepting and continuing to accept the employee in question, a choice the parties agree is totally within the purview of Martha’s. The issue of “who is perceived to be the employer by the employees” is one about which we have no direct evidence. Indeed, in view of comments we have already made about the parties’ own abilities to shift ground, one might not be surprised to find that any assessment of perception might be unlikely to point unambiguously in one direction or another. Finally, the apparent longevity of the Reliable employees tenure (minimum four months and up to in excess of two years) is inconsistent with the kind of temporary assignment one might expect to find where the referring agency was the true employer. The mere duration of the assignments, while in no way determinative, can certainly be pointed to as support for the conclusion that there is an intention to create an employer-employee relationship between Martha’s and the Reliable employees. At a minimum, it provides no support for a contrary conclusion.

22. While we have engaged in some parsing of the factors traditionally examined by the Board, it is, however, the answer to the summary and all-encompassing question which is clearly determinative in this case. Apart from the initial referral, some initial orientation (which the parties distinguished from training), and a name on a paycheque, Reliable plays no significant or on-going role in the working life of the Reliable employees who are fully integrated into Martha's operations. The overriding control, the day to day control of the Reliable employees' working lives clearly resides in Martha's. It is for all of these reasons that we are persuaded that Martha's is the employer of the Reliable employees.

23. In view of this finding, we turn now to the issue of the appropriate bargaining unit(s). First, ought the employer to be permitted, at this stage of the proceedings, to advance a new position with respect to the appropriate bargaining unit(s)?

24. It is helpful to review some of the basic components typically associated with the processing of a certification application. The application is delivered to the employer who is required to file a response within 2 days. Thus, very early on the parties are required to declare their positions with respect to the appropriate bargaining unit. Generally speaking, those declarations (contained in the application and the response) will form the framework within which the parties and the Labour Relations Officer who assists them will work. Shortly after the initial filings, the Board will (assuming the requirements of section 8(2) are met) direct the taking of a representation vote usually held on the fifth working day following the filing of the application. Where the application and response disclose agreement with respect to the bargaining unit, the Board will describe the voting constituency in those terms. Where there is no such agreement, the Board will determine the voting constituency by taking into account the positions of the parties and fashioning a voting constituency which (within reason) will maximize the utility of the vote.

25. Prior to the taking of the vote, and in addition to the consultations which typically take place on the day of the representation vote, the parties will be contacted by a Labour Relations Officer. The purpose of these contacts is, to put it broadly, to attempt to resolve any and all disputes associated with the application. But while the parties are required to declare their positions with respect to the bargaining unit issues at the very start, it is only after the response (which includes a list of employees) is filed and often after the vote has been directed that the Labour Relations Officer will begin to make efforts to secure the parties' agreements with respect to voter eligibility and what we have already referred to as the list issues. By the time the vote is taken the Officer will have prepared a report which is executed by the parties. The report will clearly set out a number of different matters but, for our purposes, will typically include the parties' positions on both bargaining unit and list issues. Either party may challenge names the other advances as an eligible voter. Those challenges and the basis for each one of them will be recorded or incorporated into the Labour Relations Officer's report.

26. The issue which arises now is in what circumstances and to what extent ought the parties to be permitted to abandon or alter the positions they have staked out prior to the taking of the vote. The question is reminiscent of the one dealt with at the outset of this decision. If the parties were irrevocably bound to their pre-vote positions, then every pre-vote disagreement might have to be litigated. That would hardly be a healthy or productive climate for this Board to foster. On the other hand, if parties are permitted to change positions or raise new issues any number of times and at any stage in the process, the finality of litigation would be nothing more than an empty hope. As a general rule, just as agreements between the parties are final, so too should the Officer's report prepared in advance of or concurrent with the taking of the vote be seen as *the* roadmap to the litigation, if any, which will follow the vote (at least insofar as it pertains to bargaining unit or list issues).

27. But just as the Board has already demonstrated in the very first issue dealt with in this decision, application of this general rule should be neither rigid nor invariable. First, it obviously makes



no sense to require a party to litigate a position it no longer advances. Such an approach would eliminate the two most typical ways of achieving settlements - either the parties agree to something different from either of their original positions or one party simply accepts the position of another. Thus, despite the general rule, there ought to be no inherent obstacle to a party abandoning its position and accepting that advanced by another.

28. There is a peculiarity of the current certification process which can result in certain oddities. Since representation votes are now routinely taken prior to any final determination regarding the appropriate bargaining unit, the results of such votes can provide great temptation to the parties to revamp their positions in an effort to capitalize on the vote results. One can only hope that the spectacle of parties racing to be the first to adopt the other's position will be truly anomalous. Similarly, while not impossible (see for example *Black Photo Corporation*, unreported June 19, 1997, Board File No. 3612-96-R) [now reported at [1997] OLRB Rep. May/June 347], it is difficult to imagine many situations in which new list challenges raised after the vote will be permitted by the Board. The Board's reluctance to entertain new list issues is likely to be matched, if not exceeded, by its sceptical response to efforts to raise new bargaining unit issues after the taking of the vote. The Labour Relations Officer's report has and continues to be a useful and important litigation marker for the parties. Parties looking to add new destinations to the roadmap will have to and may well encounter difficulties in persuading the Board that such detours are warranted.

29. How do these considerations apply to the present case? First, it should be noted that the employer in seeking to now raise this bargaining unit issue is attempting to transform what was essentially a list issue (regarding the status of the Reliable employees) into a bargaining unit issue. In effect, the bargaining unit description had been agreed to between the parties until Martha's proposed that the Reliable employees and its other employees be placed in two separate bargaining units. While it is true that there was and is an issue between them regarding the specific reference to the Reliable employees in a clarity note, this is really no more than a reflection of the issue between the parties regarding who is the employer of the Reliable employees. Indeed, that is why the Board had indicated to the parties at the outset that the real remaining issue was a list issue.

30. The employer makes a number of submissions regarding the timing of its representations. On the date of but after the taking of the vote, the employer advised the Board, in writing, of its consent to the applicant's "objection(s)\challenges" and its consequent acceptance that the Reliable employees were not employees of Martha's. In view of the apparent resulting agreement between the parties regarding the status of the Reliable employees, there was no need to advance the position of separate bargaining units, a position which has no practical meaning in the absence of an agreement (or at least a live issue) that the Reliable employees are employed by Martha's. It was not unreasonable for the employer to have had a realistic expectation that the Reliable employees issue was settled so long as it had accepted the union's position and the union had not indicated any change to its view. Thus, we accept that between April 28th and May 7th there was no apparent need or utility in the employer proposing two separate bargaining units. That of course changed on May 7th, the last day for post-vote representations, when the union first advised the Board, in writing, that it was now accepting that the Reliable employees were employed by Martha's. At that stage the employer's expectations must have changed. And while it was entitled to take and argue the position (as it did) that despite the union's May 7th submissions to the Board, the Reliable employees issue was resolved, it simply could no longer expect that the union would concur in that view. Thus, it is difficult to understand why the separate bargaining units proposal was not advanced on May 7th or at any other subsequent time prior to the end of the hearing day on May 26th.

31. But ultimately, and particularly in view of our discussion of the certification process, it is perhaps not the delay between May 7th and May 26th which the Board finds most troubling. The

employer proposed the separate bargaining units only after the results of the vote were known. Until then there was essentially no dispute between the parties regarding the bargaining unit description. If we return to the parties' initial positions, both were proposing a relatively standard single all employee unit. It was Martha's that was vigorously insisting that a clarity note be inserted to highlight the inclusion of the Reliable employees in the bargaining unit. Thus, the bargaining unit proposed by the employer was a single bargaining unit which would have included both the Reliable employees and the other Martha's employees. The employer expressed no concerns about the lack of community of interest or the labour relations difficulties which might result from including the two groups of employees in the same bargaining unit. It is difficult to resist the conclusion that it is the specific results of the vote which have determined the late emergence of community of interest and labour relations difficulties as issues which Martha's now wishes to champion.

32. In one sense we perhaps should not impugn the employer's motives - both parties in this case have obviously allowed considerations of advantage to triumph over those of principle. It is perhaps too easy for the Board to hover somewhere above the fray and exude indignation at the parties' apparent lack of principles. Parties' posturing before this Board, particularly in close certification applications, has, for decades, been determined by numbers rather than principles. Notwithstanding that, the Board must contain the potential litigation chaos that can result from the parties being permitted to unconditionally advance two sets of positions: the pre-vote positions and the post-vote positions. And while there may be many circumstances in which a party ought clearly to be permitted to relinquish its position and adopt that of an adversary, only extremely exceptional circumstances ought to warrant this Board allowing a party to raise new issues relating to the bargaining unit or the list after and in clear response to the results of the taking of the representation vote. No such circumstances were brought to our attention in this case and, accordingly, we are not persuaded that the employer ought to be permitted to raise a new bargaining unit issue at this stage of the proceedings.

33. Alternatively, even were we to entertain Martha's submissions that there ought to be separate bargaining units, we are not persuaded that the bargaining unit proposed by the applicant is not an appropriate one. It is by no means evident to us that the inclusion of Reliable employees and other Martha's employees in the same bargaining unit would generate serious labour relations difficulties. The employer points to two separate kinds of potential difficulties. First, it asserts that the union may make efforts to rationalize the treatment of the two groups of employees. Improvement for one group may come at the expense of and generate the alienation of the other.

34. Even assuming (without finding) that the employer's submissions paint a more accurate picture of the nature and extent of the current disparities in the terms and conditions of employment of the Reliable and other Martha's employees, we are still not persuaded that their inclusion in the same bargaining unit will create serious labour relations problems. The union obviously has a statutory duty to fairly represent all bargaining unit employees and may, as a result, have to determine some process for reconciling the potentially competing rights and interests of those employees. But that is an essential and extremely familiar staple of the collective bargaining diet. The union may choose to maintain or attempt to eliminate the differences between the two groups of employees. Whatever that choice may be, it is not clear to us that serious labour relations problems are the likely result.

35. The employer also argues that the existing arrangement between it and Reliable ought not to be required to be restructured as a result of the Board's bargaining unit determination. We confess no ability to opine upon the continuing viability of the commercial relationship between Martha's and Reliable. The existing arrangement may or may not survive the establishment of a collective bargaining relationship between Martha's and the Union. It is apparent to us, however, that the assertion that "during negotiations, the parties may have to address a series of issues [in relation to the Reliable employees] that simply do not arise in relation to the [other] Martha's employees" must be equally true

regardless of whether there were one or two bargaining units. In other words, to the extent it poses any specific difficulty, it is a consequence of certification not of the bargaining unit configuration. And while the parties can, will and have undoubtedly made their submissions with at least one eye on the results of the vote, our task is to determine whether the bargaining unit proposed by the applicant is appropriate. The fact that different determinations as to the appropriate bargaining unit will, in this case, determine whether or not the applicant's bargaining rights will extend to the Reliable employees is obviously of great concern to the parties. It is not, however, of any relevance or assistance to the Board in making the bargaining unit determination in this case.

36. The bargaining unit the applicant seeks is more comprehensive than the two separate units now proposed by the employer. We are satisfied that the unit proposed by the applicant encompasses a group of employees with a sufficiently coherent community of interest that they can bargain together on a viable basis without at the same time causing serious labour relations problems for the employer. It cannot escape our attention that the unit proposed by the applicant, at least insofar as it would include both the Reliable and other Martha's employees, is identical to that originally proposed by the employer.

37. Accordingly, the Board is satisfied that:

all employees of Martha's Garden Inc. in the Municipality of Metropolitan Toronto, save and except managers, persons above the rank of manager and office and sales staff,

constitute a unit of employees of the employer appropriate for collective bargaining.

38. Having regard to the results of the representation vote held on April 28, 1997, a certificate will issue to the applicant in respect of the bargaining unit set out in the previous paragraph.

39. We have considered the union's request (formerly the employer's) that a clarity note accompany the bargaining unit description so as to explicitly acknowledge the inclusion of the Reliable employees. In view of the specific findings in this decision and the fact that the Board's certificate will of course be read subject to this decision, we are not persuaded that such a clarity note is warranted or required.

40. The Registrar will destroy the ballots cast in the representation vote following the expiration of 30 days from the date of this decision unless a contrary request is received, in writing from one of the parties during that 30-day period.

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**3867-96-R; 4119-96-U** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada ("O.P.C."), and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada ("U.A."), Applicant v. **Marsil Mechanical Inc.** ("Marsil"), Responding Party; Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada ("O.P.C."), and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada ("U.A."), Applicant v. **Marsil Mechanical Inc.** ("Marsil") and **Marco Grande**, Responding Parties

**Certification - Certification Where Act Contravened - Construction Industry - Discharge - Discharge for Union Activity - Intimidation and Coercion - Remedies - Unfair Labour**



**Practice - Board finding lay-off of union supporter improperly motivated and unlawful - Board finding that certain statements of employer reasonably perceived as threats to employment - Board issuing cease and desist order and directing that damages be paid to discharged employee - Board also certifying union under section 11 of the Act**

**BEFORE:** *G. T. Surdykowski*, Vice-Chair.

**APPEARANCES:** *James Fyshe, Garth Cochrane, Dennis Carter, Tony Timperio and Morris Frandsen* for the applicant; *Joseph Liberman, Erin Kuzz and Marco Grande* for the responding parties.

**DECISION OF THE BOARD;** September 17, 1997

### I Introduction

1. Pursuant to the Board's July 25, 1997 decision and subsequent August 12, 1997 endorsement in this proceeding, the ballots cast in the representation vote herein have been counted. In the result, two ballots were marked in favour of the U.A. and three were marked against it. Accordingly, the U.A.'s unfair labour practice complaint and its request to be certified under section 11(1) of the *Labour Relations Act, 1995* must be addressed in their entirety.

2. Sections 11(1) and 72 of the Act provide as follows:

**11.(1)** Upon the application of a trade union, the Board may certify the trade union as the bargaining agent for the employees in a bargaining unit in the following circumstances:

1. An employer, employers' organization or person acting on behalf of an employer or employers' organization has contravened the Act.
2. The result of the contravention is that a representation vote does not or would not likely reflect the true wishes of the employees in the bargaining unit about being represented by the trade union.
3. No other remedy, including the taking of another representation vote, is sufficient to counter the effects of the contravention.
4. The trade union has membership support adequate for the purposes of collective bargaining in a bargaining unit found by the Board to be appropriate for collective bargaining.

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**72.** No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
- (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to

cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

3. The U.A. submits that Marsil and Marco Grande, the principal of Marsil, have breached section 72 and that “automatic” certification under section 11(1) is appropriate as a result. Marsil’s and Marco Grande’s position is that:

- (a) neither of them have contravened the Act;
- (b) if they or either of them have contravened the Act, the vote was not tainted as a result, and the contravention does not raise a question about whether the results of the vote reflects the true wishes of the employees;
- (c) if there is a question about whether the results of the vote which has been taken reflects that true wishes of the employees, other remedies, including a new vote, are sufficient to counter the effects of any contravention of the Act;
- (d) the U.A. does not have membership support adequate for the purposes of collective bargaining;
- (e) the Board ought not certify the U.A. under section 11(1) of the Act.

## II The Section 96 Complaint

4. There are two elements to the U.A.’s section 96 complaint. It complains about Tony Timperio’s lay-off on Tuesday, February 25, 1997; and about statements it alleges were made by Marco Grande and Riccardo (“Rick”) Lettieri, a principal of another contractor at the Windermere House job site, to the effect that if the U.A. won the vote, Marsil would be closed down and then re-opened under a different name. The U.A. alleges that each of these constitutes a breach of section 72 of the Act which is so serious that it should be certified under section 11(1) of the Act.

5. I heard a great deal of evidence of the events which led up to the U.A.’s application for certification on February 20, 1997. I find it unnecessary to review the evidence in detail. That part of it which is cogent to the complaint is not significantly in dispute and can be simply stated.

6. To the extent that material facts are in dispute, I consider Morris Frandsen to have been a credible and reliable witness. He testified in a candid and straightforward manner. More importantly, his evidence is consistent with the undisputed objective facts and with what is reasonable in the circumstances. Similarly, I found Garth Cochrane to be a credible witness, although his evidence is less important to the unfair labour practice complaint. On the other hand, I found none of Dennis Carter, Marco Grande or Rick Lettieri to be particularly credible or reliable. Rather than simply answering the questions put to him, Carter tended to be a suspicious and evasive witness. For example, he was clearly less than candid when questioned about what he said to Marco Grande regarding further visits to the job site if Marsil hired U.A. plumbers, and about what he knew about the Windermere House job. Although neither of these matters is particularly cogent to the issues in the complaint, his testimony in that respect is indicative of his lack of credibility. Further, Carter tended to exaggerate and was unable to avoid the influence of self-interest. Marco Grande was similarly unable to avoid the influence of self-interest, and his denials of improper conduct are difficult to accept having regard to the circumstances and the admissions which he did make. Although Lettieri is the principal of a different company, he displayed an unusual degree of interest in Marsil’s affairs both at the material times and during the hearing, which he attended even when there was no apparent reason for him to do so. Having clearly allied himself with Marsil and Marco Grande, he was far from an objective or disinterested witness. In

the result, where there is a conflict in the evidence I find myself constrained to accept Frandsen's testimony over that of the other witnesses.

7. Windermere House is a resort hotel on Lake Rousseau in Muskoka. During the winter of 1995 to 1996, it burned nearly to the ground. The decision was made to rebuild it, and it appears that in the late summer or early fall of 1996 contracts were let in that respect. The general contractor for the job was Mirtren Contractors Limited, a non-union company. A mechanical contract (for HVAC, plumbing and sprinkler systems) was subcontracted to Total Mechanical Systems Limited, of which Lettieri is the principal, and which in turn subcontracted the plumbing and sprinkler system work to Marsil. Marsil's first appearance at the job site seems to have been in or about late December 1996, but it did not begin to do any substantial amount of work on its subcontracts until immediately after the New Year in 1997. The first Marsil personnel on the job site were Marco and Silvio Grande, and Teddy Petrushevski, in late December of 1997. Adrian Torti joined them in the first week of January, apparently followed by Vince Gross in mid to late January.

8. Regardless of how or exactly when, and notwithstanding its denials in that respect, it is apparent that the U.A. was aware of the Windermere House job by mid-December 1996 when Carter, Business Manager for U.A. Local 599 visited the site on December 12, 1996. Naturally, the U.A., which was well aware that no contractor for which it held bargaining rights was doing any work there, was interested in finding out who was doing the plumbing work.

9. Carter therefore kept an eye on the job site. On January 13, 1997, Carter visited the job site where he had some discussion with Mirtren's superintendent, Marco Grande and Lettieri. The details of what occurred are not important. Suffice it to say that no one was particularly happy to see Carter.

10. Nevertheless, it was agreed that Carter would return the following day, which he did, this time accompanied by Cochrane, an organizer for the O.P.C. Again, the details of what occurred on January 14, 1997 are unimportant. It is apparent that there were two very different perspectives. The U.A. wanted to organize Marsil, and Marsil did not want to be unionized. Whether or not Carter or Cochrane specifically agreed either not to organize Marsil or not to continue to visit the job site if Marsil agreed to employ some U.A. members, they left that impression. Thinking that the U.A. could be appeased if Marsil hired a U.A. member, Marco Grande said that he would do so. Indeed, a short time later, Marco Grande telephoned Carter and requested a journeyman plumber. Carter filled his request by sending Morris Frandsen, a journeyman plumber and long time U.A. Local 599 member to the job site on January 20, 1997 where he was hired by Marsil. Marco Grande was pleased with Frandsen's work and approximately two and a half weeks later, he again contacted Carter and requested another plumber. This time, Carter sent Tony Timperio, a U.A. Local 463, member to Marsil, who hired him beginning February 5, 1997. There is little doubt that while Marco Grande felt that hiring these two union members would result in the U.A. leaving him alone, Carter intended to use them as "salts" and to apply for certification of Marsil.

11. Indeed, Carter visited the job site again, and apparently kept in touch with at least Frandsen. When it appeared to him that Marsil's work and work force had peaked, Carter decided to file the application for certification herein, which he did on Thursday, February 20, 1997.

12. On Friday, February 21, 1997, Carter telephoned Marco Grande and told him that an application for certification had been filed, and that he should check Marsil's office for a copy of the application. Marco Grande did and apparently discovered that the copy of the application which had been faxed to him was incomplete. He telephoned Carter on Monday, February 24, 1997 about this. Carter suggested they meet to discuss it. Marco Grande agreed. Carter, again accompanied by Cochrane, arrived at Marsil's office in Concord a short time later, where the two U.A. representatives met with Marco Grande and Rick Lettieri who was there with the latter.



13. After providing Marco Grande with a complete copy of the application for certification to replace the incomplete one he had apparently received over his fax machine, the discussion turned to the application, what it would mean for Marsil, and the U.A. stabilization fund and other potential benefits to Marsil as a union contractor. Notwithstanding the positive view which Cochrane apparently took, and Carter's obvious propensity to overstate things which he perceived to be in his favour, I am satisfied that Marco Grande was unhappy that the application had been made, and that he did not want to become a unionized contractor. He also had some difficulty understanding how the application could have been made, apparently because he believed that Marsil's employees would have had to attend at the Board's offices for that purpose, and he asked which of the employees were behind it. The precise words which Marco Grande used to express his suspicions in that respect are not important, because in cross-examination he acknowledged that he suspected that Frandsen and Timperio, who he knew to be U.A. members, were responsible, and I am satisfied that he specifically asked if Timperio was responsible. However, Carter and Cochrane declined to respond to Marco Grande's questions in that respect, and Lettieri steered Marco Grande away from the topic and in fact took over as Marsil's spokesperson.

14. The following day, Tuesday, February 25, 1997, Timperio was preparing to start work when Marco Grande approached him, with "termination papers" (presumably a Record of Employment among perhaps other things) in hand and advised Timperio that he was being laid off due to a shortage of work and because he had allegedly been late four to five times out of the twelve days which he had actually worked for Marsil. Timperio tried to explain that he had only been late twice, but Marco Grande would have none of it and Timperio was in fact "laid off" effective immediately. However, Marco Grande did suggest that Timperio would be recalled if Marsil had work for him, perhaps even within a "couple of weeks". Another employee, an insulator named Keith Stanton who was not an employee affected by this application and who had started on the same day as Timperio, was laid off at the same time.

15. Subsequently, Silvio Grande was married, apparently on or about March 15, 1997. He actually stopped working on March 13th, 1997 and then took a little over two weeks off for his honeymoon. Marsil hired Jason Ahee, an apprentice plumber to replace him while he was away. Ahee actually started work on or about March 12, 1997 so that he could become familiar with the job, and was laid off sometime during the first week of April when Silvio Grande returned to work. In addition, I accept the evidence of Frandsen that Marsil also hired another unidentified employee to do sprinkler work on or about March 17, 1997. Frandsen quit his job with Marsil on March 21, 1997, did not know this person's name but described him as being in his mid to late thirties or early forties, with a darkish complexion and of medium height. I reject Marco Grande's denial in that respect.

16. Timperio never returned to work for Marsil. I find that Marco Grande made no attempt to recall him. I reject Marco Grande's somewhat lame assertion that he did attempt to telephone Timperio in that respect but was unable to reach him. Not only do I accept Timperio's evidence that he has an answering machine and that he received no messages from Marco Grande, there was no explanation offered for the failure to try to reach Timperio through the U.A., notwithstanding that that is how Timperio had come to be employed by Marsil in the first place, and that the unfair labour practice complaint concerning Timperio's lay-off had been filed on March 7, 1997. In argument, counsel for Marsil suggested that there is no obligation to hire someone who is suing you. That is true, but it is not unknown for employers faced with an unfair labour practice to do so. Further, Marco Grande did not offer this as a reason for not re-hiring Timperio and it really does beg the question of why he didn't in all the circumstances. Further, this is inconsistent with Marco Grande's assertion that he asked Frandsen about Timperio's availability and that he was told that Timperio had found other work (which assertion I reject both because Frandsen denied having any such conversation and because Timperio was not in fact working when Grande said he asked Frandsen about him).

17. Timperio was unemployed until March 17, 1997 when he obtained work with Black & MacDonald Limited at Molson's facility in Barrie.

18. I am satisfied, on a balance of probabilities having regard to the evidence before the Board, that at least part of the motivation for the lay-off of Timperio on February 25, 1997, and the subsequent failure to recall him, was Marco Grande's perception that he was the one who was behind the unwanted U.A. application for certification.

19. I accept that the amount of work on a construction job tends to increase from the beginning of the job to a peak and to thereafter decrease until the job is finished. I also accept that even within this rising to and falling from a peak there are ebbs and flows in the amount of work available. And I accept that in this case the work had peaked and was beginning to decrease at the time that Timperio (and Stanton) were laid off.

20. However, it is also apparent that the actual decrease in the amount of work available was not yet significant when Timperio was laid off. Further, Silvio Grande's wedding and honeymoon, which must have been planned some time in advance, was scheduled to take place between March 15 and early April, 1997, only some two and a half weeks after the lay-off. It is far from clear that the reduction of work justified a lay-off of Timperio in the interim, but in any event, there is no satisfactory explanation for Marsil's failure to recall Timperio to replace Silvio Grande while he was away, and for opting instead to hire Ahee and the unidentified new employee who had to become familiar with the job. Ahee started work before Silvio Grande left on his honeymoon. Even if the unnamed employee was not hired on March 17, 1997, there clearly was enough work for Timperio to do. Indeed, that was so even if only Ahee had been hired. Why then did Marsil not recall him as Marco Grande had said he would?

21. The answer must lie in Marco Grande's belief that it had to have been Timperio who in fact made or was behind the U.A.'s application for certification. Even after the meeting on February 24, 1997, Marco Grande continued to harbour the incorrect belief that an employee would have had to personally attend at the Board's offices in Toronto in order to make the application for certification. Combined with this belief was Marco Grande's knowledge that Timperio was a union member, and that Timperio had been absent from work on February 21, 1997. Even though that was the day after the application was made, I am satisfied that in Marco Grande's mind, Timperio was the man behind the application. How else does this explain the precipitous lay-off of Timperio at the start of a working day (albeit accompanied by the lay-off of another employee) in circumstances where there had been no indication that any lay-off was imminent, where the evidence does not suggest that there had been a sudden or drastic reduction in the amount of work available on that day, and a subsequent failure to recall Timperio when Marsil needed at least one additional employee to replace Silvio Grande while he was away? I am also satisfied that however many times Timperio had been late, that had nothing to do with the lay-off. Not only is there nothing in the evidence to suggest that Timperio had even been spoken to about any concern in this respect, Marco Grande's own evidence is that he considered Timperio to be a good worker, that he had considered putting Timperio in charge of a job he had bid on in Bowmanville (which he did not actually get), and that he intended to recall him if further work was available. Nor am I satisfied that any of the things Silvio Grande testified to regarding his dissatisfaction with some of the things Timperio had done, or the argument Frandsen and Timperio had with Silvio Grande on February 24, 1997 had anything to do with the lay-off. Indeed, Marco Grande did not suggest that they did.

22. I am also satisfied that after the application was filed and before the vote was held, both Marco Grande and Lettieri on behalf of Marsil and Marco Grande made statements which were intended to intimidate Marsil's employees and coerce them to vote against the U.A. Lettieri admitted that he told

Marsil's employees that if Marsil was unionized, he (as the principal of Total Mechanical) would have to look for another plumbing subcontractor because his company was not unionized and most of his work was on non-union job sites. The evidence does not specifically identify which of Marsil's employees were present when he made the statement. But it does suggest that all of them were present. Notwithstanding their denials, this and the fact that both Marco Grande and Lettieri were clearly opposed to Marsil becoming unionized makes it more probably than not that they went even further and threatened that if the U.A. won the vote, Marsil would shut down and the new company would be started up in its place. I accept Frandsen's evidence that they did so.

23. Employees cannot expect to be able to make decisions about how to exercise their rights under the Act in laboratory-like conditions, free from any and all influences. Real life is not like that. In addition, employers are entitled to not want to deal with the trade union and section 70 of the Act guarantees employers a freedom to express their views in that respect. But employers cannot make overt or implied threats or promises which affect the ability of employees to freely exercise their rights under the Act in the purported exercise of employer freedom of expression. Section 70 itself stipulates that an employer's freedom of speech under the Act is a limited one, and that it cannot be exercised in the manner which interferes with the right of employees to decide for themselves whether they want to be represented by a trade union, a right which is not only guaranteed by the Act, but which is and always has been the cornerstone of the Act.

24. The Board's unfair labour practice jurisprudence is lengthy. The applicable principles are well-established. For over 20 years, and through many changes to the Act, the Board has consistently held that it is an unfair labour practice for an employer to discharge an employee if any part of the employer's motivation for doing so was to penalize the employee for the manner in which s/he was exercising his/her rights under the Act, or to try to influence other employees in that respect. *The Barrie Examiner*, [1975] OLRB Rep. Oct. 745 has often been described as the first decision in which this "taint" theory was articulated as such. At paragraph 17 of that decision, the Board held that:

... In its earlier decisions, this Board has stated that, even if only one of the reasons for a discharge related to union activity, the discharge would nevertheless constitute a violation of the Act. For a review of this jurisprudence, see *Delhi Metal Products Ltd.*, [1974] OLRB Rep. July 450. In other words, the appearance of a legitimate reason for discharge does not exonerate the employer, if it can be established that there also existed an illegitimate reason for the employer's conduct. This approach effectively prevents an anti-union motive from masquerading as just cause. Given the requirement that there be absolutely no anti-union motive, the effect of the reversal of the onus of proof is to require the employer to establish two fundamental facts - first, that the reasons given for the discharge are the only reasons and, second, that these reasons are not tainted by any anti-union motive. Both elements must be established on the balance of probabilities in order for the employer to establish that no violation of the Act has occurred.

This theory has been adopted and consistently followed since then (see, among many others, *Straton Knitting Mills Limited*, [1979] OLRB Rep. Aug. 801; *Manor Cleaners Limited*, [1982] OLRB Rep. Dec. 1848; *Knob Hill Farms*, [1987] OLRB Rep. Dec. 1531; *Beaver Lumber*, [1992] OLRB Rep. May 553 and *Wal-Mart Canada, Inc.*, [1997] OLRB Rep. Jan./Feb. 141, the latter being a decision under the current Act).

25. In short, because employees are extremely vulnerable to the influences of employers, an employer cannot affect or threaten to affect the job security or conditions of employment of employees either as a response to how employees are exercising their rights under the Act, or in an attempt to influence how they will do so.

26. In this case, I am satisfied that the lay-off of Tony Timperio was really a discharge and that it was improperly motivated. Indeed, it was no less improperly motivated even if there was some



substance to Marsil's explanation for it. I am satisfied that this conduct constitutes a refusal to continue to employ Timperio because he was, or was perceived by Marsil and Marco Grande to be behind the application for certification; that is, because he had chosen to exercise his rights under the Act in a manner which Marsil and Marco Grande did not appreciate. This constitutes a violation of section 72 of the Act.

27. Similarly, it is apparent that Lettieri was and was reasonably perceived by the employees to be speaking for Marco Grande and Marsil when he in effect said that if Marsil was unionized it would receive no more work from Total Mechanical, and it might even be shut down and a new company started up in its place. These statements would have been reasonably perceived by the employees to be threats to their future employment, and were intended to influence the employees in the representation vote which was held. As such, these also constitute violations of the Act, specifically section 72.

### III The Section 11(1) Application

28. I now turn to the U.A.'s application to be certified under section 11(1) of the Act.

29. In argument, counsel for Marsil and Marco Grande observed that section 11(1) is different from the analogous provision in the previous (Bill 40) Act. That, of course, is true, although it is also useful to recall the provision in the pre-Bill 40 Act. Section 8 of the pre-Bill 40 Act provided that:

*8. Where an employer or employers' organization contravenes this Act so that the true wishes of the employees of the employer or of a member of the employers' organization are not likely to be ascertained, and, in the opinion of the Board, a trade union has membership support adequate for the purposes of collective bargaining in a bargaining unit found by the Board pursuant to section 6 to be appropriate for collective bargaining, the Board may, on the application of the trade union, certify the trade union as the bargaining agent of the employees in the bargaining unit.*

[emphasis added]

Section 9.2 of the Bill 40 Act provides that:

*9.2 If the Board considers that the true wishes of the employees of an employer or of a member of an employers' organization respecting representation by a trade union are not likely to be ascertained because the employer, employers' organization or a person acting on behalf of either has contravened this Act, the Board may, on the application of the trade union, certify the trade union as the bargaining agent of the employees in the bargaining unit.*

[emphasis added]

30. Section 8 of the pre-Bill 40 Act can be paraphrased to read:

Upon application of a trade union, the Board may certify the trade union as the bargaining agent for the employees in a bargaining unit in the following circumstances:

- (1) an employer or employers' organization (which would have to include a person acting on their behalf) contravenes the Act;
- (2) a result of the contravention is that the true wishes of employees in the bargaining unit about being represented by the trade union are not likely to be ascertained;
- (3) the trade union has membership adequate for the purposes of collective bargaining in the bargaining unit.

31. Section 9.2 of the Bill 40 Act can be paraphrased in the same way, except that point (3) in the preceding paragraph would be deleted. In other words, the only real difference section 8 of the pre-Bill 40 Act and section 9.2 of the Bill 40 Act is that the latter did not include a “membership support adequate for collective bargaining” requirement. This requirement was reinstated by the current section 11(1).

32. When one compares section 11(1) of the current Act to section 8 of the pre-Bill 40 Act, they look very much the same. Difference in wording between section 11(1)2 necessarily results from the differences between what was primarily a document-based certification system (which was the system used in the Act for over 50 years) and the vote based system in the current Act (for a comparison of the two systems see *Burns International Security Services Limited*, [1996] OLRB Rep. Mar./Apr. 192 at paragraphs 21 to 39; and see, *The Corporation of the City of Toronto*, [1996] OLRB Rep. July/Aug. 552). In addition, the “membership support adequate for the purposes of collective bargaining” requirement has been reinstated in section 11(1)4.

33. In this respect, section 11(1)1, 2 and 4 are substantially the same as section 8 of the pre-Bill 40 Act. However, section 11(1)3 also requires the Board to consider whether any remedy short of automatic certification might be sufficient to counter the effects of the unfair labour practice. Finally, section 11(3) permits the Board to consider the results of the vote which have been taken, when considering an application under section 11(1) (or under section 11(2), which deals with improper trade union conduct - see, *Centro Mechanical Inc.*, [1996] OLRB Rep. Sept./Oct. 762).

34. Prior to the Bill 40 Act, the *Labour Relations Act* did not contain a purpose provision as such. However, many earlier Acts did include a preamble which suggested the general purpose of the legislation. For example, the pre-Bill 40 Act contained the following preamble:

WHEREAS it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees.

In addition, although it didn't explicitly say so anywhere in the Act, or any *Labour Relations Act* before that, it is clear that one of the primary purposes of all *Labour Relations Acts* prior to the Bill 40 Act was to promote the expeditious resolution of workplace disputes. For the first time, the Bill 40 Act included a purpose provision (section 2.1). There has been much political comment and debate about this and the purpose provision in the current Bill 7 Act (section 2). It is apparent that the purpose provision under the current Act is not the same as the one in the Bill 40 Act. But what is striking about the evolution of the *Labour Relations Act* is that the fundamental purposes of the legislation have remained the same throughout, and that nothing in either section 2.1 of the Bill 40 Act or in section 2 of the current Act altered these fundamental purposes; which are:

- (a) to establish and protect the rights of employees to freely choose whether or not to join a trade union, and if they choose to do so, to facilitate collective bargaining between employers and the trade union representative of the employees; and
- (b) to facilitate the orderly and expeditious resolution of workplace disputes.

35. These fundamental purposes have been accomplished by structuring a legislative scheme which establishes the means by which bargaining rights are obtained or lost; by requiring that collective bargaining proceed in good faith until a collective agreement is achieved; and by providing a framework for bargaining and aids to assist the collective bargaining partners to a collective agreement; by requiring that workplace disputes during the currency of a collective agreement be resolved through a

grievance and arbitration process, without recourse to economic sanctions or other “self-help”; and by attaching a duty of fair representation to representation rights (for both trade unions, trade union organizations, and employers’ organizations). The Act creates rights and obligations, and provides a system of checks and balances for the competing and presumptively adversarial competing rights and interests of employees, trade unions and employers. As a general matter, rights under the *Labour Relations Act* are mutually exclusive such that the rights of one party end where the rights of another begin, or the exercise of rights by one is checked by the existence of an obligation to or the rights of another (see *Ontario Hydro*, [1997] OLRB Rep. Jan./Feb. 82 at paragraph 21 to 58).

36. Sometimes, the emphasis given to the interests of what have been referred to as the “institutional” parties (i.e. trade unions and employers), and the labour relations culture which has developed both generally and at the Board, appears to give what I respectfully suggest is rather short shrift to the persons whose rights are really fundamental; that is, the employees. At its most fundamental, the *Labour Relations Act* is about giving rights to employees which they do not have at common law, and protecting those rights, the most fundamental of which is to choose or decline trade union representation, from being abrogated by employers, or by trade unions. The primary or important ancillary purpose of the unfair labour practice provisions in every modern Ontario *Labour Relations Act* (particularly sections 70, 72, 73, 74, 75 and 76 of the current Act), is to protect these employee rights. Section 11(1), like section 9.2 of the Bill 40 Act and section 8 of the pre-Bill 40 Act before it, is an important and necessary adjunct to the representation system created by the legislation. It operates, not to “penalize” employers, but to protect the rights of employees under the Act from being subverted by the unlawful conduct of employers (and in section 11(2) of trade unions).

37. It is unfortunate that such a provision is necessary in order to protect the integrity of this important piece of legislation. However, the fact is that while there are many decent, law-abiding progressive employers in this province, there is still no small number of employers which act as though it is only they who have rights, some without even considering themselves to be bound by the concomitant obligations which even *noblesse oblige* would suggest. That there are many employers who continue to fail or refuse to recognize or accept what I respectfully suggest are the basic fundamental rights of employees under the *Labour Relations Act, 1995* (and of other legislation which has also proved to be necessary and which is an important feature of the labour relations fabric of this province) is demonstrated by the number of unfair labour practice complaints against employers which come before the Board and which are either settled in a manner which indicates there was substance to the complaint, or which are determined by the Board against the employer.

38. In the result, although section 11(1) of the current Act is not the same as previous versions of the automatic certification provision, its purpose is the same, particularly when compared to the pre-Bill 40 provisions: to prevent an employer from benefiting from its own illegal acts, where those illegal acts have interfered with the ability of its employees to exercise their rights under the Act, and specifically their right to freely choose or reject trade union representation, in circumstances where the trade union concerned can demonstrate that it has employee *membership* support adequate for collective bargaining. This suggests that the approach which the Board took to the automatic certification provisions in the Act prior to Bill 40 is equally appropriate under the current Act.

39. Further, the fact that section 11(1)3 has been added as a further precondition to the exercise of the Board’s discretion in that respect does not suggest otherwise. This merely underlines that automatic certification is an extraordinary remedy which should be approached cautiously, when no other recourse is appropriate. It should be readily apparent from the Board’s pre-Bill 7 jurisprudence that this is the way in which the Board has always approached the automatic certification provisions. All section 11(1)3 has really done is to fill a gap which the Board has long recognized; that is, it has given the Board an ability to fashion a remedy or to satisfy that an employer has breached the Act in a



manner which makes the results of a representation vote an unreliable indicator of employee wishes, but not so irreparably that a remedy cannot be fashioned to restore the ability to discern the true wishes of the employees. As a practical matter under earlier versions of the automatic certification provision, the Board could only dismiss the application for certification or certify the trade union. (I observe that the Board has long had the ability to order additional representation votes (see, section 111(5) of the current Act, section 105(5) of the Bill 40 Act and section 103(5) of the pre-Bill 40 Act), but prior to Bill 7 this was of limited utility because the certification scheme was document-based and there were few cases in which automatic certification was in issue and a representation vote had been taken. Accordingly, prior to Bill 7, even if the Board considered it possible to restore the situation to permit the true wishes of the employees to be discerned, there was no mechanism available to canvass those wishes).

40. As the Board pointed out in *Maverick Mechanical Contractors Limited*, [1996] OLRB Rep. Mar./Apr. 289, certification under section 11 can only be granted to a trade union if all of the following conditions are met:

- (1) the Act has been violated;
- (2) as a result of the violations of the Act, a representation vote does not or would not reflect the employees true wishes concerning the application for certification;
- (3) no remedy, including another vote, is likely to counter the effects of the violations of the Act in that respect;
- (4) the union has membership support adequate for the purposes of collective bargaining.

41. I have already found that Marsil and its principal have violated the Act. The first precondition to automatic certification has therefore been satisfied.

42. As the Board has observed in many decisions like *Maverick Mechanical Limited, supra*, there is good reason to doubt the ability of employees to exercise their freedom of choice under the Act in circumstances where their job security has been affected or threatened. In this case, there is no reason to think that the contraventions of the Act affected either Frandsen or Timperio. Similarly, it is clear where Silvio Grande's sympathies lie. However, I am less confident that the other two bargaining unit employees, Teddy Petrushevski and Adrian Torti were able to cast their ballots as a free expression of their wishes. There is nothing to suggest that they would not have responded to Timperio's discharge and threats to their continued employment in the way that Marsil and Marco Grande hoped they would. That is, there is reason to believe that Petrushevski or Torti would have responded to the demonstration of the discharge and the subsequent threats by marking their ballots in the manner desired by Marsil and Marco Grande; namely, against the U.A. It may be that these two employees or either of them would have voted against the U.A. anyway, but the contraventions of the Act by the company and its principal have destroyed the reliability of the ballot box as an indicator of their true wishes. I am therefore satisfied that the second precondition has been met.

43. The Board has generally granted automatic certification under the provision in effect at the time where an employer has made threats to job security which are conditional upon whether a trade union is certified, or where the cumulative impact of events or actions which would not by themselves cause such great concern is such that the employees' freedom to choose has been irreparably impaired. I am satisfied that this is also the case here. I am not satisfied that any remedy which the Board could fashion could restore the situation to that which existed before the unfair labour practices were perpetrated such that another vote would be any more reliable an indicator of the true wishes of the

employees than the vote which has already been held. There is no reason to think that Marsil and Marco Grande do not continue to harbour the same views and intentions, or that they are not perceived to do so by the employees. The third precondition has therefore been satisfied.

44. This leaves the question of “adequate *membership* support for collective bargaining” [emphasis added]. The application for certification is in the construction industry. In that context, it is my opinion that the U.A. does have adequate membership support for collective bargaining. First, it is clear that this assessment is made as of the certification application date, not either after the Act was contravened or subsequently. Second, upon being certified, Marsil would immediately be plugged into the provincial bargaining scheme under the Act for the industrial, commercial and institutional sector of the construction industry. In that context, the question of membership support is virtually moot. As for bargaining rights which would attach for the other sectors of the construction industry, it is my opinion that forty per cent membership support, which the U.A. has in this case, is adequate for collective bargaining, having regard to the way in which the unionized part of the construction industry operates. The fourth precondition of section 11(1) certification is therefore satisfied as well.

#### IV Conclusion

45. In conclusion, all four preconditions to section 11(1) certification are met in this case, and I can discern no reason not to grant the U.A.’s application in that respect.

46. In the result, the Board:

- (a) declares that Marsil Mechanical Inc. and Marco Grande have violated the *Labour Relations Act, 1995*, and specifically section 72 thereof, by discharging Tony Timperio for exercising his rights under the Act, and by making threats which interfered with the ability of employees to freely exercise their rights under the Act;
- (b) orders Marsil Mechanical Inc. and Marco Grande to forthwith cease and desist from violating the *Labour Relations Act, 1995*;
- (c) orders Marsil Mechanical Inc. and Marco Grande to forthwith pay to Tony Timperio, as damages for unlawfully discharging him, the value of the wages and benefits he would have received but for the contravention of the Act, between February 25 and March 16, 1997 (inclusive), and for which damages Marsil Mechanical Inc. and Marco Grande are jointly and severally liable, in an amount to be either agreed between the parties or assessed by the Board (I note that the U.A. did not seek reinstatement for Mr. Timperio);
- (d) directs that, pursuant to section 160(1) of the *Labour Relations Act, 1995*, a certificate issue to the applicant affiliated bargaining agent on its own behalf and on behalf of all other affiliated bargaining agents of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, and the Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (the employee bargaining agency) in respect of all plumbers, plumbers’ apprentices, steamfitters and steamfitters’ apprentices in the employ of Marsil Mechanical Inc. in the industrial, commercial and

institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman;

- (e) directs that, also pursuant to section 160(1) of the *Labour Relations Act, 1995*, a certificate issue to the applicant trade union in respect of all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Marsil Mechanical Inc. in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman;
  - (f) directs that the Registrar destroy the ballots cast in the representation vote taken in this matter following the expiration of 30 days from the date of this decision unless a statement requesting that the ballots not be destroyed is received by the Board from one of the parties before that 30-day period expires;
  - (g) orders Marsil Mechanical Inc. to post copies of this decision in places where it is likely to come to the attention of the employees in the bargaining unit, and if there are no such places, to mail a copy, at its own expense, to each bargaining unit employee. If copies of the decision are posted, they must remain posted for a period of 30 days.
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**1295-97-G The Master Insulators' Association of Ontario Inc., Applicant v. International Association of Heat and Frost Insulators and Asbestos Workers; International Association of Heat and Frost Insulators and Asbestos Workers, Local 95, Responding Parties**

**Construction Industry - Construction Industry Grievance - Remedies - Union amending Hiring Hall Procedures to discourage members from accepting name-hires - Board finding that amendment to Hiring Hall Procedures undermining provisions of collective agreement granting employer certain privilege regarding name-hires - Board finding that collective agreement containing implied term that neither party will conduct itself in manner so as to frustrate its operation - Board declaring that union's amendment to Hiring Hall Procedures violating collective agreement, but declining to issue cease and desist order**

**BEFORE:** *D. L. Gee*, Vice-Chair, and Board Members *W. N. Fraser* and *G. McMenemy*.

**APPEARANCES:** *Bruce W. Binning* and *Peter Woloszansky* for the applicant; *A. M. Minsky* and *Joe Dewit* for the responding parties.

**DECISION OF THE BOARD;** September 29, 1997

1. The title of proceedings is hereby amended to refer to the responding parties as: "International Association of Heat and Frost Insulators and Asbestos Workers; International Association of Heat and Frost Insulators and Asbestos Workers, Local 95".



2. This is a policy grievance brought pursuant to the provisions of section 133 of the *Labour Relations Act, 1995*. No issue was taken with the Board's jurisdiction to hear this matter as a grievance. The parties seek a determination from the Board as to whether the Union's conduct, described below, violates the relevant collective agreement. No damages are sought.

3. No evidence was presented by the parties at the hearing of this matter. It was agreed that, for the purposes of determining this matter, the Board would assume the facts set out in the pleadings to be true.

4. The response succinctly sets out the facts as follows:

(a) The parties are bound by a Provincial Agreement effective from June 15, 1995 until April 30, 1998 ("the Provincial Agreement");

(b) Provisions for the name-hiring of union members were introduced into the Provincial Agreement in 1982. Article 2.01(b)(ii) of the Provincial Agreement provides:

"The Union agrees that it will give to any employer requesting the hiring of employees, a complete list of all available mechanics and a complete list of all available apprentices, the choice of whom to hire shall alternate between the employer and the Union so as to provide a 50% 'name-hire' from each of the lists that the employees are hired from."

(c) Article 14 of the Union's Working Rules sets out the "Hiring Hall Procedures". In 1985, the Union implemented a provision with respect to layoffs after employment of less than 21 days ("the 21-day rule") which provides as follows:

"If a member is terminated after less than twenty-one (21) working days on a job, then the number of days he/she worked will be added to his/her original lay-off date to give him/her a new lay-off date on the list.

Members requesting lay-offs, quitting without just cause or being terminated with cause, will not be eligible to take advantage of the twenty-one (21) day rule. If a member works over twenty-one (21) days, then he/she will automatically be placed on the bottom of the list."

(d) The above-noted rule was amended by the Union's membership on September 14, 1996 to provide an additional exception to the "21-day rule" for individuals who are name-hired. Such individuals would return to the bottom of the hiring hall list if they were laid off within 21 days although a refusal of a name-hire would not be counted against such person. The Union ascertained that at least one other building trades union had adopted a similar rule when confronted by the problem at hand;

(e) The amendment was devised to prevent abuses by contractors of the 50-50 name-hire rule in the Provincial Agreement. In the past, contractors have quickly laid off individuals who were referred by the Union from the list while retaining in their employ those individuals who are name-hired for longer periods of time. Many of the contractors "over-hired" Union members with the intention of retaining only those who had been name-hired and "laying off", without notice or cause, those who were not. Meetings were held between the Applicant and the Union and grievances were filed by the Union to try to curtail this practice which created disparate employment opportunities between the classes of Union members who were frequently name-hired and those who were not.

(f) In the period prior to the by-law amendment referred to in subpara. 8(d) *supra*, many contractors adopted a practice of name-hiring individuals for short-term employment to the detriment of Union members who were not requested. The amendment was therefore designed to curtail this new and abusive name-hiring practice by providing a further exception to the 21-day rule for name-hires and to enhance the opportunities of members on the list to be referred for short-term periods of employment in order to assist them in qualifying for employment insurance.

(g) Since the adoption of the rule by the Union, there have been only rare instances of any members refusing to be name-hired for short-term periods of employment: in the 10½ months' period from September 14, 1996 until July 31, 1997, the total number of name-hires were 212 with 26 individuals employed for less than 21 days and only 5 refusing to be name hired.

5. The grievances referred to in paragraph 4(e) above were not pursued to arbitration.

6. The applicant asserts that the amendment made to Article 14 of the Union's Working Rules undermines, and therefore violates, Article 2.01(b)(ii) of the Provincial Agreement. In the applicant's submission, the Union's reasons for making the amendment, and whether or not anyone has refused a name-hire as a result of the amendment, is irrelevant. The fact is that the amendment was introduced in order to discourage members from accepting name-hires and thus undermines Article 2.01(b)(ii) of the Provincial Agreement.

7. The Union asserts that the operation of the hiring hall is an internal union matter over which the Board does not act as a "watchdog". Arguing by analogy to the residual theory of management rights, the Union argues that the Board should adopt a theory which assumes the Union to have total control over the hiring hall, limited only by restrictions it has agreed to in the collective agreement. In the instant case the Union submits that there is nothing in the Provincial Agreement which mandates the application (or existence) of the 21-day rule and accordingly the Union retains the right to amend it at will and the Board should not interfere. Alternatively, the Union argues that the amendment does not purport to affect the right of employers to name-hire 50 percent of their employees. In the Union's submission, article 2.01(b)(ii) operates as it always has.

8. While the Union acknowledges that the amendment made to Article 14 of the Working Rules was intended to discourage members from accepting name-hires, and may in fact have that result, it urges the Board to consider that the practical effect of the amendment is, at most, minimal.

9. The issue before us is whether article 2.01(b)(ii) of the Provincial Agreement contains an implied term that the Union will not utilize its Working Rules to block the operation thereof. It is our determination that it does. In our view, it is an implied term of article 2.01(b)(ii) of the Provincial Agreement that neither party will conduct itself in a manner so as to frustrate its operation. Thus, whatever may be said for the sanctity of the Union's operation of its hiring hall, or the laudable goals it seeks to advance, the Union is bound by the commitments it has made in the Provincial Agreement and cannot invoke its Working Rules so as to frustrate them (see: *Re Windsor Machine Co. Ltd.* (1982), 4 L.A.C. (3d) 331; *Re National Windows Ltd.* (1984), 15 L.A.C. (3d) 72; *Re Labatt Brewing Co. and Distillery Workers* (1982), 2 L.A.C. (3d) 373).

10. We turn then to the question of whether the amendment made to Article 14 of the Working Rules undermines the operation of Article 2.01(b)(ii) of the Provincial Agreement. Article 2.01(b)(ii) grants a privilege to employers. It grants them the right to have specific individuals, as opposed to whoever happens to be at the top of the hiring hall list, referred to their job sites. In this manner, employers are able to obtain the services of individuals they are familiar with and know to be good workers. The Union acknowledges that the amendment made to Article 14 of the Working Rules may have the effect of discouraging individuals who are named for hire by an employer from taking the job. Thus, notwithstanding the fact that the Provincial Agreement grants them the right to do so, as a result of the amendment in question, employers may not be able to hire the individuals they wish. As a result, it is our determination that the amendment made by the Union to the Working Rules undermines the right given to employers in article 2.01(b)(ii) of the Provincial Agreement and accordingly violates the implied term.

11. The applicant requests that the Board order the Union to cease and desist from enforcing the amendment. While the Board is entitled as a matter of law to grant the relief requested, the question is whether such relief is appropriate in the circumstances of this case. Such relief is generally only awarded where the party found to be in violation of the collective agreement has somehow signified its intention not to be bound by the collective agreement and, accordingly, violations can be expected to recur in the future (see: *Re Royal Crest Life Care Group* (1994), 38 L.A.C. (4th) 250). In the present case, the Union has not indicated in any way that it will not abide by the Provincial Agreement and we have no reason to believe that the violation will recur. As a result, we are not prepared to issue a cease and desist order.

12. For the reasons set out above, we hereby declare that the Union, in amending the Working Rules as set out above, has violated article 2.01(b)(ii) of the Provincial Agreement. This grievance is allowed.

**CONCURRING OPINION OF BOARD MEMBER GEORGE MCMENEMY:** September 29, 1997

1. I concur with the majority's view set out in paragraph 9 of the decision, but feel compelled to point out that the implied term which the majority has found to exist in article 2.01(b)(ii) is a *mutual* one, i.e. it is implied that *neither* party will act in a manner so as to frustrate the operation of article 2.01(b)(ii). Just as the union is precluded from acting in a manner so as to undermine the employers' ability to name-hire, the employers are precluded from acting in a manner so as to undermine the mutual intent of the article that there would be 50-50 hires. It is a two way street.

2. The majority decision does not leave the union without the ability to remedy employer abuses of article 2.01(b)(ii). For reasons which we are not aware of, the Union did not pursue grievances which it previously filed concerning contractor abuses of article 2.01(b)(ii). The filing of a grievance remains a means available to the Union to challenge employer practices which it feels are an abuse of article 2.01(b)(ii) under the Collective Agreement. Statutory avenues for relief may also exist.

3. Thus, although I concur that the Union's amendment of the working rules was improper, I am not unsympathetic to their predicament and believe that there are other avenues of relief available to them.

4. The ideal solution to this problem would be for the Union and the Association to sit down at the next round of bargaining and negotiate language into the collective agreement that preserves the 50-50 rule while at the same time stopping its abuse by what, I would suggest, is a very small group of contractor members of the Association.

5. I fear that failure to negotiate the end of the abuse of the 50-50 rule will erode the trust and good will and stable labour relations that exist between the parties.

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**0282-97-R** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America, Applicant v. **Northam Development Corporation** and/or Northam Construction Corp., Responding Parties

Certification - Construction Industry - Reconsideration - Union applying for reconsideration of decision dismissing certification application and imposing one year "bar" on new applications - Board dismissing union's certification application after finding that bargaining



**unit included only one employee - Union arguing that mandatory “bar” not applying in the circumstances - Reconsideration application dismissed**

**BEFORE:** *Kevin Whitaker*, Vice-Chair, and Board Members *W. N. Fraser* and *G. McMenemy*.

**DECISION OF THE BOARD;** September 8, 1997

**I**

1. By decision dated July 9, 1997, an application for reconsideration in this matter was dismissed. Reasons for the dismissal comprise the balance of this decision.

2. The applicant sought reconsideration of a decision of the Board dated May 14, 1997 which dismissed an application for certification. In the decision of May 14, 1997, the Board determined that as there was no more than one person in the bargaining unit (having regard to the applicants position), the application for certification should be dismissed pursuant to section 9(1) of the *Labour Relations Act, 1995* (the “Act”).

3. The application for reconsideration filed on May 26, 1997 raised three separate arguments as to why the May 14, 1997 decision was made in error. By decision dated June 10, 1997, the Board dismissed two of the three grounds with reasons and invited the parties to make submissions only on the third outstanding ground.

4. The issue that the Board sought submissions on was whether it was an error to initially impose a “bar” of one year on the applicant.

**II**

5. The application for certification was made on April 22, 1997. A representation vote was ordered on April 28 and held on April 30, 1997. Ballots cast were segregated and not counted. Following the vote, the applicant took the position that there was only one person in the bargaining unit on the date of application. The responding parties assert that there were no persons in the bargaining unit on the date of application.

6. Before deciding the dispute between the parties, the Board issued the decision of May 14, 1997 in which the application was dismissed. In that decision, the Board imposed a “bar” of one year on the applicant.

**III**

7. The applicant argues that the Board is only obliged to impose a “bar” pursuant to section 10(3) of the Act where an application is dismissed pursuant to that section (section 10). A dismissal pursuant to section 10 of the Act can only occur where following a representation vote, the Board determines that 50 per cent or less of the ballots cast were in favour of the trade union. The applicant asserts that as the ballots cast in this application were not counted, the application cannot be considered to have been dismissed pursuant to section 10 of the Act.

8. The responding parties argue on this point that the application was in fact dismissed pursuant to section 10 of the Act. It is suggested that section 10(1) requires the Board to certify where more than “50 per cent of the ballots cast” are in favour of the trade union where ballots are cast by employees who are in a bargaining unit “that is determined by the Board to be appropriate for collective bargaining”. If the Board determines as it has here, that ballots cast are by employees who are not in a

bargaining unit appropriate for collective bargaining, then the prerequisite conditions for a certificate to be issued have not been met. This results in a dismissal pursuant to section 10 of the Act and therefore attracts the "bar" in section 10(3).

9. On this point we would agree with the responding parties. The question that must be answered in section 10 is the following; have more than 50 per cent of employees in a bargaining unit determined to be appropriate for collective bargaining, cast ballots in favour of the trade union? If the answer is "no", then the application must be dismissed pursuant to section 10. Accordingly, the provisions of section 10(3) apply and a "bar" of one year is required.

10. In this case, following the vote but before the single ballot was counted, the Board determined that the one ballot cast was by an employee who was not in a unit appropriate for collective bargaining. Even if the ballot was cast in favour of the trade union, the answer to the question posed in paragraph "9" above would be "no".

11. The responding parties also argue that even if the application was not dismissed pursuant to section 10 of the Act, the Board should exercise its discretion pursuant to section 111(2)(k) of the Act to impose a "bar" of one year in the circumstances. In support of this, the responding parties suggest that the true wishes of employees have been tested and for that reason a "bar" should be imposed. The applicant takes the position that the true wishes of the employees have not been tested as the single ballot cast remains uncounted.

12. Whether or not the true wishes of employees have been tested, in our view even if we are wrong in our finding that this application is dismissed pursuant to section 10 of the Act and for that reason the "bar" is mandatory, we would exercise our discretion in these circumstances to impose a "bar" of one year pursuant to section 111(2)(k) of the Act.

13. Section 7(10) of the Act deals with circumstances where an applicant withdraws an application for certification after a representation vote is taken:

7. . . .

(10) If the trade union withdraws the application after the representation vote is taken, the Board shall not consider another application for certification by the trade union as the bargaining agent of the employees in the proposed bargaining unit until one year has elapsed after the application is withdrawn.

. . .

14. Where an applicant withdraws an application in these circumstances, the Board is required to impose a "bar" of one year. This would apply generally whether the ballots were counted or not following the representation vote. In our view, it would be an absurd result if an applicant could avoid a "bar" by having the application dismissed following the vote rather than seeking a withdrawal. In effect, an applicant would be in a better position with a dismissal following a vote as opposed to a withdrawal.

15. Having regard to the clear language of section 7(10), it would be inappropriate to permit a fresh application for certification from the applicant within a year of the date of application in this case.

16. For these reasons, the application for reconsideration was dismissed.

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**0717-97-R** *Pembroke Civic Hospital, Applicant v. Pembroke General Hospital, The United Steelworkers of America, The Practical Nurses Federation of Ontario, The Association of Allied Health Professionals: Ontario, The Ontario Nurses Association, and The Canadian Union of Public Employees and its Local 1502, Responding Parties*

**Bargaining Rights - Bargaining Unit - Sale of a Business - CUPE representing comprehensive "service bargaining unit" (including paramedical employees and registered practical nurses) at General Hospital - Steelworkers' union, Practical Nurses Federation and AAHP:O representing employees in separate bargaining units of service workers, registered practical nurses and paramedical employees at Civic Hospital- Parties agreeing that closure of Civic Hospital and transfer of its operations to General Hospital amounting to sale of a business - Parties also agreeing that Board's jurisdiction under section 69(6) triggered and that Board should determine appropriate bargaining structure under that section - Board directing that appropriate bargaining unit structure is one at place at General Hospital and that vote be held in which CUPE, Steelworkers' union, AAHP:O and Practical Nurses Federation be entitled to have their names on the ballot**

**BEFORE:** *Russell G. Goodfellow*, Vice-Chair, and Board Members *J. A. Ronson* and *R. R. Montague*.

**APPEARANCES:** *Steven L. Moate* and *Lois Moss* for the applicant; *Lynn Harnden*, *Sheila Shultz* and *Jim Galbraith* for the General; *Mark Rowlinson* and *Rheal Lemoine* for Steelworkers; *Cynthia Watson*, *Charlene Avon*, and *Sandy Hopper* for C.U.P.E.; *Daniel Randazzo* and *Gary Beremer* for PNFO; *Susan Ursel*, *Sue McCulloch*, *Mike Groom* and *Sharron Luloff* for the AAHP:O; *Risa Pancer* and *Marc-Andre Pelletier* for ONA.

**DECISION OF RUSSELL G. GOODFELLOW, VICE-CHAIR AND BOARD MEMBER R. R. MONTAGUE;** October 28, 1997

1. This is an application under section 69 of the *Labour Relations Act, 1995* by the Pembroke Civic Hospital (the "Civic"). The application relates to the scheduled closure of the Civic by December 31, 1997, pursuant to a direction by the Health Services Restructuring Commission (the "Commission"), and the transfer of the Civic's operations to the Pembroke General Hospital (the "General").

2. The Commission also directed the Civic and the General to develop a Human Resources Adjustment Plan that would address the impact of the directions on the workforce. To that end, the two hospitals met with the representatives of their various unions and were successful in resolving some issues (e.g. the dove-tailing of seniority lists) but not others. The issues that remain unresolved, and that arise in the context of this application, are the appropriate bargaining unit structure at the General and the identity of the resulting bargaining agent(s). These issues relate to all of the unionized employees of the two hospitals except those who are presently represented by the Ontario Nurses' Association ("ONA"). ONA represents bargaining units at both hospitals and it was agreed between the two hospitals and ONA that its bargaining unit and bargaining rights would continue at the General. For this reason, ONA's participation in the present hearing was in the nature of a "watching brief".

3. Hearings in this matter took place over the course of four days in August, September and October 1997, concluding on October 16. All of this was prior to the proclamation of Bill 136 which, as of the date of this decision, is not yet in force. The last day of hearing also occurred after the release of the Board's decision in *Humber/Northwestern/York-Finch Hospital* Board File No. 3480-96-R, dated October 10, 1997, [now reported at [1997] OLRB Rep. Sept./Oct. 872] to which all parties made reference.



4. At the conclusion of the hearing, the two hospitals asked the Board for a decision as expeditiously as possible; in "bottom-line" form, if necessary. Having regard to this request, the Board has chosen to provide something more than a bottom-line decision but something less than the fulsome reasons that we might otherwise provide. We do so, in part, out of deference to the desire for expedition and, in part, because we view the issues, although extremely significant for the parties, as relatively straightforward.

5. The bargaining unit structure at both hospitals, including the identity of the trade unions, the date of certification for the unit, the approximate number of employees in each unit, and the approximate percentage that the number of employees in each unit at the Civic forms of the total number of employees when added to those in issue at the General, are shown in the attached chart. It must be pointed out, however, that the number of employees and the corresponding percentages were not the subject of complete agreement between the parties and the Board's numbers may differ from the parties' own. However, the possible variations in the numbers are not significant for our purposes. Accordingly, the numbers should be understood as estimates, at best, requiring no elaboration as to their origins.

6. The parties agreed that, for purposes of dealing with the issues raised by the application, we could assume that our jurisdiction under subsection 69(6) had been triggered. This provision states:

69.(6) Despite subsections (2) and (3), where a business was sold to a person who carries on one or more other businesses and a trade union or council of trade unions is the bargaining agent of the employees in any of the businesses and the person intermingles the employees of one of the businesses with those of another of the businesses, the Board may, upon the application of any person, trade union or council of trade unions concerned,

- (a) declare that the person to whom the business was sold is no longer bound by the collective agreement referred to in subsection (2);
- (b) determine whether the employees concerned constitute one or more appropriate bargaining units;
- (c) declare which trade union, trade unions or council of trade unions, if any, shall be the bargaining agent or agents for the employees in the unit or units; and
- (d) amend, to such extent as the Board considers necessary, any certificate issued to any trade union or council of trade unions or any bargaining unit defined in any collective agreement.

7. It was the position of the General and C.U.P.E. that the bargaining structure at the General was appropriate, that it should remain in place, that no vote should be held, and that C.U.P.E.'s bargaining rights should continue to the exclusion of any vote involving the United Steelworkers of America ("Steel"), the Association of Allied Health Professionals: Ontario ("AAHP:O") and the Practical Nurses Federation of Ontario ("PNFO"). In the alternative, the General submitted that if the Board were inclined to order a vote, and having regard to the percentages, only C.U.P.E. and Steel should be on the ballot. The Civic took no position on the appropriate bargaining unit structure but favoured a vote in which all of the affected trade unions that wished to participate would be included on the ballot(s). The unions representing employees at the Civic (i.e. Steel, AAHP:O and the PNFO) asked the Board to adopt the bargaining unit structure found at the Civic and for votes to be held between the relevant union and C.U.P.E. in each of the bargaining units. If the Civic's structure were not accepted, the PNFO indicated that its constitution would prevent it from participating in any broader-based ballot.

8. Having regard to the evidence and submissions of the parties, the Board has determined that the appropriate bargaining unit structure is the one presently in place at the General and that employees should have the opportunity to choose their bargaining agent from among all of the affected trade unions that wish to be placed on the ballot. We have come to this conclusion for the following reasons.

9. First, there was no real dispute between the parties that both bargaining unit structures are appropriate and that both have worked very well at the respective hospitals. The evidence was that the bargaining unit structure at the Civic has not generated any appreciable problems of the kind typically associated with “fragmentation”. This was explained, to a large extent, as the product of the different skill sets required by employees in the different bargaining units.

10. Second, although not equivalent to a pure “purchase and sale” model (given the origins of the closure and the “transfer” of certain managerial, non-union and directorial personnel), the transaction was something less than a merger. Indeed, the Commission expressly looked at the merger model and rejected it. Instead, it adopted a closure model, with certain key executive positions remaining in the hands of former General employees. In these circumstances, what we see ourselves as being asked to do by the unions representing employees at the Civic is to engraft on the surviving hospital the labour relations model at the closing hospital *notwithstanding the success of the surviving hospital’s own bargaining unit structure*. In our view, and notwithstanding the success of the Civic’s own collective bargaining relationships, all other things being equal, we believe that greater weight ought to be accorded the structure already in place at the General.

11. However, not all other things are equal. In particular, we note that the bargaining structure at the General has stood the test of *considerable time*. It has a 25-year history, as contrasted with a three to five-year history (depending on the unit) at the Civic. While, as counsel for Steel points out, it may be fair to assume that most employees like their unions, that is somewhat beside the point. The issue is not the fondness of the employees for their existing bargaining agent (a question upon which we have decided that employees should be given the opportunity to pronounce) but the relative strengths and successes of the two models. One of these models, and it happens to be the one at the surviving hospital, has demonstrated its success over a much longer period. In our view, that factor too weighs heavily in favour of the General’s bargaining unit structure.

12. Further, and notwithstanding that many of the concerns associated with “fragmentation” (a word which we hesitate to use in these circumstances, given its somewhat pejorative content) are not meaningfully present, the clear trend in the Board’s case law has been towards broader based bargaining units. That development, and the reasons for it, were recently described by the Chair of the Board in *Humber, supra*. That decision, which represents the Board’s latest word on bargaining unit structures in the context of hospital reorganizations, bears quoting at length:

26. Before turning to the particular questions that the parties have posed in this case, I think that it is useful to mention two aspects of the labour-relations environment that may bear upon the answer to those questions - or at least illuminate the context in which the answer must be given.

27. The first aspect worth mentioning, is the pace of organizational change on the “employer side of the bargaining table” - beginning in recent years with “downsizing” and “restructuring” in the private sector, and now accelerated in the public sector, as cash-strapped governments try to find more efficient ways to deliver public services. Today, across Ontario, hospitals, school boards and municipal institutions are being restructured at an unprecedented pace, and on an unprecedented scale. And although this does not necessarily mean that the resulting institutions will be bigger *overall*, (because the consolidated organization may be smaller than the sum of its parts), it probably does mean that there will be fewer individual organizations, as their diverse elements are welded together and rationalized.

28. Against that background, it seems odd to suggest that the bench mark for bargaining structure should be the status quo, or that one should strive to maintain the checker board of bargaining units that prevailed historically. When business and government organizations are changing - sometimes radically - it seems curious to suggest that collective bargaining structures should stay the same or that the Board should not take the opportunity to evaluate that history in light of current concerns. It seems more appropriate to give serious consideration to consolidation (given the employee intermingling) and to cast a critical eye on bargaining-unit patterns that may retard the ability of employers and employees to adapt to these changes.

29. The current pattern of bargaining units in the broader public sector was, for the most part, established on a case-by-case basis from the 1960s to the mid-1980s - having regard to local conditions and the collective bargaining environment of the time, and, in recent years, giving considerable weight to the parties' agreement (i.e. whether or not the Board itself would find that unit to be appropriate, absent such agreement). And, no doubt, at individual institutions, those bargaining structures have worked more or less well. But I do not think that this history provides an unailing guideline to what the "appropriate" bargaining structure should look like in the year 2000. Nor is precedent determinative in a situation that is quite unprecedented.

30. In exercising its discretion to determine what is "appropriate" under section 69(6) of the Act, I do not think that the Board can ignore what is going on in the rest of the collective bargaining system. Any sensible reading of the word "appropriate" must take these realities into account. And the dominant reality today is towards fewer, larger public sector institutions - be they hospitals, school boards or municipalities - and fewer, bigger bargaining units.

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31. The second factor that one has to keep in mind is the evolving consensus that broader-based bargaining structures are generally *better* for collective bargaining - and ultimately *better* for *BOTH* employers and employees.

32. This is not to say that "bigger is always better". However, labour relations boards across the country have all recognized the utility of broader-based bargaining structures, because they are more likely to: promote stability, increase administrative efficiency, enhance employee mobility, and generate a common framework for employment conditions for all employees in an enterprise. Bigger bargaining units also have more critical mass, so that they are better able to facilitate and accommodate change. (See the policy considerations enunciated by the British Columbia Labour Relations Board in *Insurance Company of British Columbia* (1974), 1 Can. LRBR 403 - a case which, incidentally, involved a large public sector institution; and compare, in a different legal context, the decision of this Board in *Mississauga Hydro-Electric Commission*, [1993] OLRB Rep. June 523.)

33. In the absence of statutory prescriptions, there is, today, a pronounced preference for broader-based bargaining units, unless that objective collides in a serious way with the employees' ability to organize themselves. Indeed, the Board has often favoured broader-based bargaining units, even in certification situations, where the shape of the unit may well influence whether there will be any collective bargaining at all. The Board has recognized that the *structure* of collective bargaining "matters" - as it noted in cases such as *Board of Governors of Ryerson Polytechnical Institute*, [1984] OLRB Rep. Feb. 371; *Bestview Holdings Limited*, [1983] OLRB Rep. Aug. 1250; *The Board of Education for the City of Toronto*, [1986] OLRB Rep. June 900; *Kidd Creek Mines Limited*, [1984] OLRB Rep. Mar. 481; *TV Guide Inc.*, [1986] OLRB Rep. Oct. 1451; and, more recently, *Pepsi Cola*, [1995] OLRB Rep. Aug. 1311. Fragmented bargaining structures can pose serious labour-relations problems. Conversely, broader based bargaining units make collective bargaining go more smoothly and successfully.

34. There is nothing particularly novel about these observations. Nor are they unique to Ontario, or to the Ontario Labour Relations Board. The consolidation of bargaining structures has been ongoing in other jurisdictions for many years (the Post Office, CBC, railways, and airlines come to mind); and policy considerations such as those discussed in the Ontario cases can be found in the reasons of other adjudicators in other jurisdictions. Those boards, too, have been inclined to favour more comprehensive bargaining units unless there are persuasive countervailing considerations. See, for example: *ICBC*, *supra*; *Canadian Pacific Limited* (1976), 1 CLRBR 361; *Saskatchewan Wheat*



*Pool* (1977), 1 CLRBR 510; *Atomic Energy of Canada Ltd.* (1978), 1 CLRBR 92; *British Columbia Telephone Limited* (1977), 2 CLRBR 385; *CBRT and Sea Span International Ltd.* (1979), 2 CLRBR 213; and compare the “rethinking” evidenced in Ontario cases such as *Mississauga Hydro-Electric Commission, supra*, and *Caressant Care Nursing Home of Canada Limited*, [1996] OLRB Rep. Sept./Oct. 748.

35. The fact is: bargaining units are being consolidated on a regular basis - either because the legislation requires it, or because the legislation permits it, (e.g. section 7 of Bill 40), or because of employer restructuring, or contingent upon the merger of trade unions themselves. And generally speaking, neutral commentators think that such consolidation is a good thing. Bigger may not always be better, but broader, more comprehensive bargaining units are usually preferable - and more appropriate - than narrow fragmented ones. On the other hand, there may well be a variety of broadly-based groupings (but less than “all employees”) which were and continue to be appropriate despite an operational merger of the predecessor organizations. In the hospital sector, for example, comprehensive units of paramedicals, service workers, etc. have been and may still be appropriate despite the big size of the successor organization.

36. In summary, the direction of the law, the direction of policy, the metamorphosis of employer and union organizations, and the evolution of thinking on these issues have, for the most part, all pointed towards broader bargaining units and extended area bargaining.

37. I do not think that one should ignore these trends when applying section 69(6) of the Act.

#### IV

38. Section 69(4) of the Act is designed to *preserve* the “like bargaining units” which existed before, with such revisions as may be necessary to eliminate conflict between established bargaining-unit descriptions. By contrast, the terms of section 69(6) are much broader, and contemplate the possible elimination of bargaining units or collective agreements, as well as the termination of bargaining rights - that is, the restructuring of bargaining units, bargaining agents, and collective agreements, to meet the new situation. Section 69(6) empowers the Board to take a second look at existing bargaining structures and realign bargaining units and bargaining rights in a manner that makes industrial relations sense in the new circumstances.

39. In each case, the Board has to give some weight to the status quo. But at the same time, the Board also has to consider the desirability of modifying the existing bargaining structure and representational rights in a manner which will better suit the new situation. Unlike section 69(4) where the Board is maintaining “what is” and ironing out definitional conflicts, section 69(6) requires the Board to determine what is “appropriate” - which will not necessarily be what is there already.

40. Section 69(6)(b) contemplates that the Board will designate one or more “APPROPRIATE” bargaining units. The use of the term “APPROPRIATE” is no accident. It suggests an exercise that is similar to the one undertaken by the Board on an application for certification, where there is also a question of “appropriateness” (see section 9 of the Act). And, with that in mind, I do not think the Board should ignore the fact that an existing bargaining structure may be one that the Board would never have found to be “appropriate” in the first place, or may be unnecessarily fragmented.

41. Of course, these general notions of what is “standard” and “appropriate” must be balanced against the fact that an idiosyncratic unit or fragmented bargaining structure may nevertheless have worked quite well in its former organizational setting. The Board’s approach under section 69(6) need not be precisely the same as on an application for certification, where a group of employees is trying to organize for the first time. But, by the same token, where there is a successorship, intermingling, and a “two-union situation”, any inclination to preserve established bargaining rights must be considered in relation to the express power to realign the bargaining structure to meet the new circumstances - recognizing that such realignment will not raise concerns about access to collective bargaining that the Board mentioned in “pure certification” cases such as *Canada Trustco*, [1977] OLRB Rep. June 330 or *K-Mart Limited*, [1981] OLRB Rep. Sept. 1250.

42. On an application for certification, the Board must weigh the question of the “appropriate” bargaining unit, in light of its potential impact on the ability of employees to organize. Too broad a

definition would unnecessarily impede the employees' statutory right to organize themselves - however desirable or "more appropriate" a more comprehensive unit may be. However, in a successorship/intermingling scenario, the Board usually does not have to worry about that. The situation is more like the one described by the Board in *Stratford General Hospital*, [1976] OLRB Rep. Sept. 459, where two unions were competing and the Board observed:

Even where the Board has found that two competing applications propose appropriate bargaining units, it has exercised a discretion in favour of the more comprehensive bargaining unit, in finding "the" appropriate bargaining unit for the purposes of section 6(1) [now section 9] .... Surely where there are competing applications, the Board can be more concerned with the ideal characteristics of collective bargaining structures in that, whatever the decision, employees will not be denied access to the collective bargaining process.

Similarly, in his text, *Canadian Labour Law*, former Board Chair G. W. Adams, Q.C. commented:

When intermingling involves the merger of two groups of unionized employees, a Board will look to the existing bargaining structure to decide if maintaining the separate units can be justified. The Boards note that the choice of the employees regarding their bargaining agent should be honoured, unless to do so would undermine rational collective bargaining. Balanced against this recognition of the employees' wishes is the preference for single, all-employee units. *Where a conflict arises between these two policy goals, the interest of maintaining industrial peace prevails and undue fragmentation is avoided.* [emphasis added]

43. In other words, where there is no concern about access to collective bargaining, Labour Boards have more scope and more inclination to opt for broader-based bargaining units. Or to put the matter another way: in intermingling situations, where there are different ways to define the new structure and different "degrees of appropriateness", labour boards may be more inclined to opt for the "*more appropriate*" unit, unless there are compelling countervailing considerations (for example: if there are long-established "craft rights" that have historical and statutory recognition, as well as continuing collective bargaining utility; if there is an existing local structure that facilitates extended area bargaining, or conforms more closely to established sectoral collective bargaining practices; and so on).

13. While Steel, AAHP:O and the PNFO, quite properly, took some sustenance from certain passages in this decision (e.g. the latter part of paragraph 35), and emphasized the differing context (i.e. the elimination of small units of maintenance employees and/or operating engineers), it is fair to say that the dominant feature of the decision is the proposition that broader based bargaining units, all other things being equal, will be viewed by the Board as more appropriate and, hence, as between two appropriate units, will be the one selected. In this particular case, there was no evidence of the kind of factors identified in paragraph 43 of the decision that would cause us to depart from the foregoing conclusions.

14. In coming to this decision, we have not forgotten the concerns raised by the bargaining agents at the Civic as to whether a vote in a larger unit can be "meaningful" given the variation in numbers at the two hospitals. To examine the problem in that way, however, is to "put the cart before the horse". Before the Board decides whether a vote should be held, it must decide on the appropriate bargaining unit structure. Further, and in any event, it may well be that one of the strengths of the collective bargaining relationship at the General, when viewed through the eyes of the membership, may be the structure of the bargaining unit. This possibility demonstrates that any effort to "level the playing field" by altering the bargaining unit structure would be fraught with uncertainty and, for that reason as well, is to be avoided.

15. As to the question of whether employees should be entitled to vote in the larger unit, we think democracy is a good thing. In the past, in other circumstances, it is true that the Board has established a 20 or 25 percent threshold before it will order a vote. However, if anything is clear in this

case it is that the past is no longer a reliable guide to the future. The Board will quickly be entering an era in which bargaining relationships (many of them of long standing) predicated on prior employee choice will be interrupted. In circumstances such as these, and notwithstanding the Board's prior case law, we agree with counsel for the Civic's submission that bargaining relationships grounded on employee choice are to be preferred. Indeed, given the struggles that have surrounded the move towards a single hospital in this community (of which the Board cannot help but take administrative notice), we believe that allowing employees a choice to express themselves on which bargaining agent they would prefer is particularly important.

16. Finally, we emphasize, as did the Board in *Humber, supra*, that we are dealing with the question of bargaining unit appropriateness in the context of a sale of business application. Nothing in these reasons should be understood as addressing the question of appropriate bargaining unit structure in the context of a certification application.

17. In the result, the Board hereby directs that the appropriate bargaining unit structure is the one presently in place at the General, and that a vote be held in which C.U.P.E., Steel, AAHP:O and the PNFO will be entitled to have their names on the ballot. Should any of them not wish to do so, they must notify the Board of their intentions in this regard within five working days of the date of this decision. The vote will be held on a date to be set by the Registrar. The matter is referred to the Manager of Field Services to confer with the parties as to the vote arrangements and the settling of a voters' list.

18. In closing, the Board wishes to express its appreciation to all of the parties to this proceeding for the highly cooperative and professional nature of their participation.

**CONCURRING DECISION OF BOARD MEMBER J. A. RONSON; October 28, 1997**

I agree in the result and concur in the directions contained in the decision of Vice-Chair Goodfellow. But it should not be assumed that I agree in whole or in part with his reasoning.

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	CIVIC			GENERAL		
	UNION	MEMBERSHIP	% WHEN INCLUDED IN ENTIRE CUPE UNIT	WHEN CERTIFIED	UNION	MEMBERSHIP WHEN CERTIFIED
Office, clerical, service, trades	Steel	95	26%	October 1994	CUPE	148 December 1972
Paramedical, Professional, Technical	AAHP:O	35	12%	September 1992	CUPE	68-72 December 1972 (including recent voluntary recognition for 20-25 of these)
RPN's	PNFO	35	12%	January 1992	CUPE	50-52 December 1972
TOTAL	3 units	165	38%		1 unit	266-272

**4242-96-JD** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721, Applicant v. **Ryco Alberici** and International Union of Operating Engineers, Local 793, Responding Parties

**Construction Industry - Jurisdictional Dispute - Parties - Practice and Procedure - Local 721 of Ironworkers' Union and Local 793 of Operating Engineers' union disputing assignment of certain work involving operation of cranes and fork-lifts used at car assembly plant in connection with removal and reinstallation of equipment for new production assembly line - Work in dispute had been subject of March 1997 arbitration decision under Canadian Plan for Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") - Employer and Local 793 asserting that Board ought not to entertain Local 721's application on basis that Plan had already issued decision - Local 721 not considering itself bound by the Plan and not participating in arbitration decision under the Plan - Board denying Plan intervenor status in Board proceeding - Board concluding that Local 721 not bound to the Plan in its own right or as result of actions of international union and that Local 721 accordingly not bound by arbitration decision - Board also determining that there is no basis to exercise its discretion against entertaining the application**

**BEFORE:** *D. L. Gee*, Vice-Chair, and Board Members *W. N. Fraser* and *G. McMenemy*.

**APPEARANCES:** *David McKee* and *Mike Coleman* for the applicant; *Bruce Binning*, *Larry Eller* and *Tom Taylor* for Ryco Alberici; *S.B.D. Wahl* for International Union of Operating Engineers, Local 793.

**DECISION OF THE BOARD;** October 31, 1997

1. The style of cause is hereby amended to reflect the correct name of one of the responding parties: "Ryco Alberici".
2. This matter is an application concerning a work assignment under section 99 of the *Labour Relations Act, 1995* which was scheduled for consultation on October 9, 1997.
3. The work in dispute is all work in connection with the operation of a number of cranes and forklifts used at the Chrysler Assembly Plant in Brampton in connection with the removal and reinstallation of equipment required for a new production assembly line. The operation of the larger pieces of machinery was assigned to the International Union of Operating Engineers, Local 793 ("Local 793") while the operation of the smaller pieces of machinery was assigned to the International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 ("Local 721"). Each union claims the work assigned to the other.
4. The very work in dispute in this application was the subject of a decision rendered on or about March 26, 1997 by Arbitrator Knight under the Canadian Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan"). Representatives of the International Union of Operating Engineers, the International Association of Bridge, Structural and Ornamental Iron Workers and Ryco Alberici appeared at the arbitration hearing. Local 721 did not attend the arbitration hearing nor did it authorize the International Association of Bridge, Structural and Ornamental Iron Workers to appear on its behalf. As set out in greater detail below, Local 721 made it clear, in advance of the arbitration hearing, that it did not consider itself bound to the Plan and would not be bound by a decision rendered by an arbitrator under the Plan.
5. Local 793 and Ryco Alberici assert that the Board ought not to entertain this application on the basis that a decision has already been rendered under the Plan. Local 721 asserts that, as it is not

stipulated to the Plan, it is not bound by a determination rendered by the Plan and the Board should proceed to entertain its application.

#### Status of the Plan to Intervene

6. At the commencement of the consultation, counsel was present on behalf of the Plan and advised the Board that the Plan wished to intervene. As the Plan had not been given notice of the Board's proceedings it had not filed an intervention. Counsel indicated that the Plan had a right to intervene because the Board's decision would impact on the Plan's ability to render final and binding decisions. Alternatively, counsel indicated that the Plan should be permitted to intervene on the basis that it could be of assistance to the Board. If granted standing to intervene, the Plan would require an adjournment in order to prepare. Local 793 and Ryco Alberici supported the Plan's request for standing to intervene. Local 721 opposed the request.

7. The Board ruled orally that the Plan would not be granted intervenor status. In our view, the Plan was not entitled to intervenor status as of right as it did not have a real direct discernible interest in the proceeding. Nor were we persuaded that the Plan should be granted *amicus curiae* status as, in our view, its participation was not necessary in order to ensure that all relevant issues were properly presented.

#### Whether Local 721 is stipulated to the Plan

##### (i) The Facts

8. The following facts were relied upon by the parties in the course of argument concerning whether the Board ought to entertain this application.

9. There is no issue that the International Union of Operating Engineers and its Local 793 and Ryco Alberici are stipulated to the Plan.

10. There is no issue that the International Association of Bridge, Structural and Ornamental Iron Workers is stipulated to the Plan.

11. In April, 1996, the Board rendered a decision reported as *Asea Brown Boveri Inc.*, [1996] OLRB Rep. Mar./April 185. In *Asea Brown*, the Board determined that the Iron Workers District Council of Ontario International Association of Bridge, Structural and Ornamental Iron Workers, Local 759 ("Local 759") was stipulated to the Plan. At paragraph 26 of the decision, the Board stated as follows:

Local 759 is an affiliate of the International and the relevant collective agreement mandates that the local be bound to all arbitration decisions made pursuant to the Plan, or made by this Board.

The collective agreement referred to by the Board is the Iron Workers' Provincial ICI Agreement. It provided as follows:

#### ARTICLE 19 - JURISDICTIONAL DISPUTES

19.1 Any jurisdictional dispute between the Union and any other building and construction trades union, that involved any work undertaken by an Employer, will in no way interfere with the progress and prosecution of work. The parties agree to abide by a decision of the Impartial Jurisdictional Disputes Board and/or the Ontario Labour Relations Board.

12. Article 19 of the Iron Workers' Provincial ICI Agreement was amended in the last round of collective bargaining such that it now provides as follows:



## ARTICLE 19 - JURISDICTIONAL DISPUTES

19.1 Any jurisdictional dispute between the Union and any other building and construction trades union, that involves any work undertaken by an Employer, will in no way interfere with the progress and prosecution of the work. The parties agree to abide by a decision of the Ontario Labour Relations Board.

13. The Constitution of the International Association of Bridge, Structural and Ornamental Iron Workers stipulates in Article IV entitled "Jurisdiction" that: "the above claims are subject to trade agreements and decisions of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry or the Building and Construction Trades Department." Article XXII entitled "District Councils" provides in section 2 as follows:

Sec. 2. It shall be mandatory for all Local Unions to affiliate with the different Councils of the various departments of the American Federation of Labour-Congress of Industrial Organizations or Canadian Labour Congress, which are representative of their respective branches of the trade.

14. The preamble to the Procedural Rules and Regulations for the Plan provides:

These procedures shall apply to:

• • • •

B. All National and International Unions affiliated with the Building and Construction Trades Department, AFL-CIO, and their local constituent bodies.

15. The Plan itself provides as follows:

## ARTICLE I

## SCOPE OF APPLICATION

The procedures shall apply to:

• • • •

(b) All unions affiliated with the Department.

16. On January 24, 1997, Local 721 filed a grievance against Ryco Alberici concerning the work in dispute. Ryco Alberici referred the matter to the Plan on February 27, 1997. On February 28, 1997, the Plan Administrator, Phil Benson, wrote to the International Association of Bridge, Structural and Ornamental Iron Workers, the International Union of Operating Engineers and Ryco Alberici acknowledging the request of Ryco Alberici and indicating that "all parties are stipulated to the Plan". On February 29, 1997, Local 721 referred the grievance to the Board pursuant to section 133 of the Act. On March 3, 1997, Local 721 wrote Mr. Benson and advised that it was not stipulated to the Plan and the Plan could not commence proceedings. On March 4, 1997 Local 793 filed an intervention into Local 721's referral of grievance to the Board asserting that the matter was inarbitrable as the grievance was a jurisdictional dispute and all parties were stipulated to the Plan. On the same day, Local 721 and Ryco Alberici entered into an agreement pursuant to which Local 721 withdrew its referral to the Board and indicated that a jurisdictional dispute application would be filed with the Board. On March 6, 1997, Ryco Alberici withdrew its referral of the matter to the Plan.

17. On March 6, 1997, Local 793 wrote to Mr. Benson indicating that a jurisdictional dispute existed between Local 793 and Local 721 and requesting that his office proceed to arbitrate the issues in dispute. On March 11, 1997, Local 721 wrote James Phair, the International Representative of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, and advised

him that Local 721 "refuses to participate in any proceeding before the Plan." Mr. Phair was instructed not to participate in proceedings before the Plan in any way and was instructed not to make submissions on behalf of Local 721. Local 721 referred to the fact that the Iron Workers' Provincial Agreement, to which the International is a party, was amended in the last round of negotiations to remove any reference to the Plan. The letter to Mr. Phair was copied to Mr. Benson.

18. On March 17, 1997, Local 721 filed the instant jurisdictional dispute with the Board. By letter dated March 19, 1997, Local 721 advised the International of such and further indicated that "Local 721 will not under any circumstances agree to proceed before the Plan."

19. On March 24, 1997, an arbitration hearing was held pursuant to the Plan. Present at the hearing were representatives of the International Union of Operating Engineers, the International Association of Bridge, Structural and Ornamental Iron Workers, and Ryco Alberici. In a decision rendered by Arbitrator Knight on March 26, 1997, it is indicated that "all three parties to the dispute agreed they were stipulated to the Plan". Arbitrator Knight determined that the contractor's assignment should not be disturbed.

#### (ii) Relevant Jurisprudence

20. In addition to the *Asea Brown* decision discussed above, the parties referred the Board to the following jurisprudence. In the case of *Delta Catalytic Industrial Service Limited*, [1996] OLRB Rep. Mar./April 233, the employer objected to the Board's entertaining a grievance filed by the International Brotherhood of Electrical Workers, Local 353 ("Local 353") under the Electrician's Provincial ICI Agreement on the basis that the subject matter of the grievance had earlier been decided by a panel of the General Presidents' Maintenance Committee (the "GPC") under the terms of the General Presidents' Maintenance Committee Project Agreements (the "GPA"). The decision summarizes Local 353's argument as to why it was not bound by the decision reached by the Committee at paragraph 24 as follows:

24. Local 353 asserted that the GPC process under the GPA could not bar its right to arbitration. Local 353 asserted that it was not a party to the GPA. In its view it had no right on [sic] authority to launch grievances under the GPA. It was, contended Local 353, the international unions that set up this mechanism to block arbitrations, and consequently Local 353 should not be considered to be bound by a decision of a panel of the GPC.

21. The Board determined that Local 353 was bound by the decision of the GPC on the basis that it had initiated the process, fully participated therein and took no issue with the GPC's ability to adjudicate the dispute until after a final decision had been rendered. Further, Local 353 had participated in the GPC process in the past and accepted that it was bound to the result. In such circumstances, the Board determined that the GPC's decision resolved the dispute and terminated the grievance proceeding. The Board made no determination as to whether Local 353 was bound to the GPC process as a result of the involvement of its international. *Delta Catalytic* is distinguishable from the facts of the instant case wherein Local 721 has never accepted the ability of the Plan to adjudicate its disputes and has never participated in any fashion in its proceedings.

22. In the case of *Benson v. Labourers' International Union of North America et al.* (1995), 131 Nfld. & P.E.I.R. 311; 408 A.P.R. 81 the Prince Edward Island Supreme Court considered the issue of whether Strait Crossing Inc. ("SCI"), a contractor involved in the construction of the link between New Brunswick and Prince Edward Island, was stipulated to the Plan. A jurisdictional dispute had arisen between the Labourers' International Union of North America (the "Labourers") and the International Association of Bridge, Structural and Ornamental Iron Workers ("Iron Workers"). Both unions were stipulated to the Plan. An arbitrator under the Plan ruled that the work should be assigned to the Iron Workers. The Labourers and SCI were of the view that the arbitrator lacked jurisdiction as the contractor

was not stipulated to the Plan. The Plan administrator applied to the courts for a mandatory order directing the Labourers and SCI to abide by the arbitration award.

23. Prior to the arbitration hearing, both the Labourers and SCI wrote letters in which it was asserted that SCI was not stipulated to the Plan. The arbitrator dismissed the correspondence because, in his view, the parties had submitted to his jurisdiction. This fact was disputed by both the Labourers and SCI. Mr. Justice Ghiz dismissed the relevancy of the issue as follows:

In any event, I need not delve into the accuracy of this matter because it is clear to me the arbitrator could not assume jurisdiction on his own. In short, he could not assume jurisdiction unless that jurisdiction had been voluntarily conferred on him by the parties. The arbitrator's jurisdiction must come from the parties' voluntary adherence or stipulation to the Plan prior to the dispute in question.

24. Mr. Justice Ghiz then reviewed the provisions of the Plan which stipulate that employers become stipulated to the Plan by: signing a stipulation setting forth that they are willing to be bound; being a member of a stipulated association of employers with authority to bind its members or; being parties to a collective agreement providing for the settlement of disputes under the provisions of the Plan. SCI had not signed a stipulation nor was it a member of an employers' association that had the authority to bind it to the Plan. The collective agreement between SCI, the Labourers and the Ironworkers did not stipulate SCI to the Plan. As a result, it was determined that SCI was not stipulated to the Plan and the application was dismissed.

25. The Plan then appealed the Trial Court's decision dismissing its application to the Prince Edward Island Supreme Court (Appeal Division). In *Benson v. Labourers International Union of North America* (1996), 142 Nfld. & P.E.I.R. 81; 445 A.P.R. 81 (hereinafter referred to as the "PEI case") the Plan argued that the Trial Court was required to show deference to the arbitrator's decision that SCI was stipulated to the Plan and should not have interfered with such decision unless it was patently unreasonable. The Supreme Court rejected the Plan's argument on the basis that the question as to whether SCI was stipulated to the Plan was a question concerning the arbitrator's jurisdiction and accordingly correctness, rather than reasonableness, was the proper standard of review. The Supreme Court determined that the trial judge did not err in concluding that the arbitrator was incorrect in deciding that SCI was stipulated to the Plan and dismissed the appeal.

26. Finally, the parties referred the Board to the case of *The Canadian Plan for the Settlement of Jurisdictional Disputes in the Construction Industry, by its Administrator Philip Benson v. Labourers' International Union of North America, Local 1208* (1997), 151 Nfld. & P.E.I.R. 247; 471 A.P.R. 247 (Nfld. S.C) (hereinafter referred to as the "Newfoundland case") in which the Plan was seeking a mandatory order directing Local 1208 to abide by the decision of a Plan arbitrator and to cease pursuing its grievances to arbitration. Local 1208 resisted the application on the basis that it was not stipulated to the Plan. The Newfoundland Supreme Court determined that Local 1208 was stipulated to the Plan and granted the order sought. Given that the Labourers' International Union of North America is stipulated to the Plan (see the PEI case) it would appear that the facts of the Newfoundland case are similar to those of the instant case.

27. The oral decision rendered by Mr. Justice Lang indicates that he considered: the terms of the Plan; the Procedural Rules thereto; the Constitution of the Building and Construction Trades Department AFL-CIO; the Constitution and Bylaws of the Newfoundland and Labrador Building Construction Trades Council; the Hibernia Construction Agreement; the Labourers' International Union of North America Constitution; and the Uniform Local Constitution of the Labourers' International Union of North America.



28. In determining that Local 1208 is stipulated to the Plan, Lang J. relies on the decision of Ghiz J. in the PEI case, trial division, as authority for the proposition that local unions are stipulated to the Plan by virtue of the above documents (see paragraphs 12, 32 and 34 of the Newfoundland decision). With the greatest of respect, we are unable to see how the PEI case can be cited as such an authority. First, only international unions were parties in the PEI case. There was no issue that they were stipulated to the Plan. The issue as to whether any union, let alone a local union, was stipulated to the Plan did not arise. Further, the quote from the PEI case which Lang J. relies on for his assertion that Ghiz J. found the unions to be stipulated to the Plan is in fact a quote from the text *Canadian Labour Law*, (2nd Ed.) The quote from *Canadian Labour Law* is a paraphrasing of the Plan document itself. The fact that the Plan document states that various entities are bound does not make it so. Finally, it is apparent from an exchange that took place between Lang J. and counsel during the course of the oral ruling that Lang J. was unclear as to the distinction between the Labourers' International Union of North America and the Labourers' International Union of North America, Local 1208. It would appear that Lang J. was of the mistaken impression that Local 1208 had participated in the Plan before. From the comments made by counsel, it would appear that it was in fact the International that had participated and not Local 1208. As a result, we do not find the Newfoundland decision to be helpful to our determination of the issue before us.

### (iii) Relevant Statutory Provisions

29. Local 793 referred to section 91(13) and (14) of the *Labour Relations Act*, R.S.O. 1990, c.L.2.:

91 (13) Where a trade union or a council of trade unions and an employer or an employers' organization have made an arrangement to resolve any differences between them arising from the assignment of work, the Board may, upon such terms and conditions as it may fix, postpone inquiring into a complaint under this section until the difference has been dealt with in accordance with such arrangement.

(14) The Board shall not inquire into a complaint made by a trade union, council of trade unions, employer or employers' organization that has entered into a collective agreement that contains a provision requiring the reference of any difference between them arising out of work assignment to a tribunal mutually selected by them with respect to any difference as to work assignment that can be resolved under the collective agreement, and the trade union, council of trade unions, employer or employers' organization shall do or abstain from doing anything required of it by the decision of the tribunal.

30. Local 793 also referred to the following subsections of section 99 of the *Labour Relations Act*, 1995:

99. . . .

(3) The Board is not required to hold a hearing to determine a complaint under this section.

. . .

(5) The Board may make any interim or final order it considers appropriate after consulting with the parties.

. . . (8) If a collective agreement requires the reference of any difference between the parties arising out of work assignment to a tribunal mutually selected by them, the Board may alter the bargaining unit determined in a certificate or defined in a collective agreement as it considers proper to enable the parties to conform to the decision of the tribunal.

31. Finally, Local 793 referred to the following "Bill 80" provisions

**145.** (1) In sections 146 to 150,

“constitution” means an organizational document governing the establishment or operation of a trade union and includes a charter and by-laws and rules made under a constitution; (“acte constitutif”)

“jurisdiction” includes geographic, sectoral and work jurisdiction; (“juridiction”)

“local trade union” means, in relation to a parent trade union, a trade union in Ontario that is affiliated with or subordinate or directly related to the parent trade union and includes a council of trade unions; (“syndicat local”)

“parent trade union” means a provincial, national or international trade union which has at least one affiliated local trade union in Ontario that is subordinate or directly related to it. (“syndicat parent”)

• • •

**147.** (1) A parent trade union shall not, without just cause, alter the jurisdiction of a local trade union as the jurisdiction existed on May 1, 1992, whether it was established under a constitution or otherwise.

(2) The parent trade union shall give the local trade union written notice of an alteration at least 15 days before it comes into effect.

(3) On an application relating to this section, the Board shall consider the following when deciding whether there is just cause for an alteration:

1. The trade union constitution.
2. The ability of the local trade union to carry out its duties under this Act.
3. The wishes of the members of the local trade union.
4. Whether the alteration would facilitate viable and stable collective bargaining without causing serious labour relations problems.

(4) The Board is not bound by the trade union constitution when deciding whether there is just cause for an alteration.

(5) If a local trade union makes a complaint to the Board concerning the alteration of its jurisdiction by a parent trade union, the alteration shall be deemed not to have been effective until the Board disposes of the matter.

#### (iv) Argument

32. Local 793 asserts that Local 721 is stipulated to the Plan either in its own right or as a result of the actions of the International. Alternatively, Local 793 asserts that Local 721 is a privy of the International such that issue estoppel applies. In any event, Local 793 urges the Board to exercise its discretion and decline to entertain Local 721’s application.

33. In support of its assertion that Local 721 is stipulated to the Plan in its own right, Local 793 submits that it has already been determined in the PEI and Newfoundland cases that local unions are stipulated to the Plan.

34. Local 793 further asserts that Local 721 is stipulated to the Plan in its own right as article XXII of the Constitution of the International Association of Bridge, Structural and Ornamental Iron Workers mandates that all locals must be a member in the Building and Construction Trades Department of the AFL-CIO. The Constitution further stipulates in article IV that jurisdictional claims are subject

to decisions of the Plan. Article I of the Plan provides that it applies to all unions affiliated with the Department. Local 793 submits that the combination of mandatory membership in the Department and the Plan applying to all locals in the Department means Local 721 is stipulated to the Plan. The Board was advised that the international unions sign a separate document stipulating themselves to the Plan.

35. With respect to the fact that the Iron Workers' Provincial ICI Agreement was amended in the last round of negotiations to remove any reference to jurisdictional disputes being submitted to the Plan, Local 793 asserts that the language in question was simply a vestige of sections 93(13) and (14) of the *Labour Relations Act*, R.S.O. 1990, c.L.2. Following the repeal of sections 93(13) and (14), such language was no longer necessary. Local 793 asserts that Local 721 remains bound to submit jurisdictional disputes to the Plan by virtue of the Iron Workers' constitution.

36. In the alternative, Local 793 asserts that the International has the ability to bind Local 721 to the Plan. Local 793 described the International as the designated employee bargaining agency and asserts that the commitments of the International are commitments of the employee bargaining agency which must be enforced through the Provincial Agreement.

37. As further evidence of the International's power to bind Local 721 to the Plan, Local 793 relies on the provisions introduced into the Act by Bill 80 (sections 145 to 150). These provisions make specific reference to an international altering the work jurisdiction of a local and provide the local with a remedy where such is done in the absence of just cause. In Local 793's submission, these provisions mean that, where there is a difference of opinion between an international and a local, and the Plan has been used, the local does not have an independent right to challenge the decision by way of a jurisdictional dispute application to the Board.

38. Finally, Local 793 argues that Local 721 is bound by the decision of the Plan as it is a privy of the International. In support of such proposition, Local 793 relies on the Ministerial designation designating the International Association of Bridge, Structural and Ornamental Iron Workers and the Iron Workers District Council of Ontario as the designated bargaining agent representing, *inter alia*, Local 721.

39. If the Board does not find Local 721 to be bound by the Plan's decision, Local 793 urges the Board to exercise its discretion and decline to entertain the application. Local 793 submits that the Board should use its discretion to encourage law and order in the "jurisdictional dispute jungle". According to Local 793, that law and order is provided by the Plan and the Board ought to support and encourage the use of the Plan and any other agreed upon dispute resolution mechanism.

40. Ryco Alberici supports the submissions made on behalf of Local 793 and encouraged the Board to exercise its discretion so as to not entertain the application on a further basis. Ryco Alberici advised the Board that the work that is the subject matter of this dispute is completed. It was completed according to the direction of the Plan arbitrator. The Plan arbitrator's decision indicates that it is of no precedential value. The Board would not award damages for an incorrect assignment of work in these circumstances. Accordingly, Ryco Alberici submits that the issue is now academic and the Board ought not to entertain it.

41. As we have adopted most of the submissions made on behalf of Local 721 in our determination of this matter, those submissions are not set out here.

(v) Decision

42. It is our determination that Local 721 is not stipulated to the Plan nor is it a privy of the International, and therefore it is not bound by the decision rendered by Arbitrator Knight. We have



further determined that there is no basis in the circumstances on which we would exercise our discretion not to entertain the application.

43. We concur completely with Local 793's submissions wherein we were urged to support and encourage alternative dispute resolution mechanisms which are voluntarily entered into by the parties thereto. We are in agreement with the Board's conclusion in *Asea Brown* and *Delta Catalytic* that parties should be bound by determinations made by alternative dispute resolution mechanisms and not permitted to relitigate issues before this Board. In our view, however, in order for a party to be bound to a decision of an alternative dispute resolution mechanism, that party must have voluntarily agreed to be bound, or be bound through some other mechanism or process, such as the acts of a duly authorized agent. Absent such agreement, which may be express or implied, there is no basis on which it can be forced to attorn to the jurisdiction of such a body. The Ontario Labour Relations Board has a statutory mandate to hear and resolve jurisdictional disputes. The Board would be in serious error were it to refuse to entertain applications on the basis that another body had rendered a decision without satisfying itself that the party which resists the decision was bound to the process.

44. Thus, we turn to the question of whether Local 721 is stipulated to the Plan in its own right or whether it became bound as a result of the actions of the International.

45. In our view, it cannot be said that Local 721 is stipulated to the Plan in its own right. We do not view the Newfoundland and PEI cases as being of persuasive precedential value. As indicated above, notwithstanding the Newfoundland Supreme Court's comments to the contrary, the PEI case did not address the question of whether local unions were stipulated to the Plan and made no determination with respect to that question. Although the issue of whether a local union is stipulated to the Plan was squarely in issue in the Newfoundland case, for the reasons set out above, we do not view the Newfoundland Court's analysis of the issue as compelling.

46. We are also not persuaded that the provisions of the Constitution and the Plan relied upon by Local 793 result in Local 721 being stipulated to the Plan. We were provided with no evidence that Local 721 is in fact a member of the Department. It is possible that they are not in compliance with the terms of the Constitution and have failed to become a member of the Department. However, even if we were to assume that Local 721 is a member of the Department, it is our view that such membership alone would not stipulate them to the Plan. In our view, just as the international unions have done, in order for Local 721 to become stipulated to the Plan it would have to have entered into an agreement to such effect. We were provided with no evidence that such an agreement exists.

47. We do not view the amendment of the Iron Workers' Provincial ICI Agreement so as to remove any reference to the Plan to be irrelevant. As long as the Agreement stipulated that the parties agreed to abide by a decision of the Plan, there was a document, entered into by Local 721's designated bargaining agent which is authorized by statute to bind Local 721 to the Provincial ICI Agreement, which signified its agreement to be bound by the Plan. The deletion of such reference not only removes the only evidence of Local 721's agreement to be bound by the Plan, it indicates an intention of the parties to the Agreement that Local 721 no longer be bound.

48. Local 793 argues in the alternative that Local 721 is stipulated to the Plan as a result of the actions of the International Association of Bridge, Structural and Ornamental Iron Workers on the basis that the International is the designated bargaining agency. This argument must fail. The International is not the designated bargaining agency. The designated bargaining agency is the International Association of Bridge, Structural and Ornamental Iron Workers **and** the Iron Workers District Council of Ontario. The International is but one constituent element of the designated bargaining agency and cannot act as the "designated bargaining agency" on its own. The only actions taken by the designated bargaining

agency are those referred to above, where it agreed to *remove* a provision from the Provincial ICI Agreement referring to the Plan.

49. Local 793's argument concerning the provisions added to the Act by Bill 80 must also fail. Local 793 asserts that, pursuant to section 147, the International can alter Local 721's work jurisdiction and Local 721's remedy is to file an application under section 147 of the Act. Local 793 submits that binding Local 721 to the Plan is simply an exercise of the International's control over Local 721's work jurisdiction. As such, Local 721's relief is an application under section 147 of the Act. We do not accept that binding Local 721 to the Plan is analogous to altering its work jurisdiction. There is little doubt that, if asked, the internationals would in no way view submitting their jurisdictional disputes to the Plan as agreeing to an alteration to their work jurisdiction. We simply do not accept that an international union can stipulate its locals to the Plan and the local's remedy is an application under section 147. Parenthetically even if section 147 was available as a remedy, this fact does not lead to a conclusion that Local 721 is stipulated to the Plan. We have determined that Local 721 is not stipulated to the Plan and the existence of section 147 does not change that finding.

50. For the reasons set out above, we do not accept that Local 721 is bound to the Plan in its own right or as a result of the actions of the International.

51. Local 793 argues in the alternative that Local 721 is a privy of the International and thus bound by the decision of the Plan. Local 793 relies on the decision of the Ontario Court of Appeal in *Rasanen v. Rosemount Instruments Limited* (1994), 17 O.R. (3d) 267.

52. In our view, the facts before the court in case of *Rasanen* are distinguishable from the case before us. In *Rasanen*, the plaintiff, although not a party to the earlier proceedings, was represented at the hearing, had notice of every step in the process, called the witnesses he wanted, introduced the relevant evidence he needed and had the chance to respond to the evidence and arguments made against him. In the view of the Court of Appeal, he had all the benefits of an official party. In the present case, Local 721 was not present at the arbitration and thus had no opportunity to participate in the proceedings.

53. Is it accurate to say that Local 721 is a privy of the International? It is trite law that international unions and local unions are separate legal entities (see: *Pigott Construction Company Limited*, 65 CLLC 16,053; and *American Standard Products*, [1965] OLRB Rep. Feb. 590). We are unaware of any basis upon which the International had the authority to attend at the arbitration hearing as the representative of Local 721. We are not persuaded that the fact that the International is one of the constituent elements of the designated employee bargaining agency makes it and Local 721 "privies". As indicated above, the designated bargaining agency is not the International alone. Further, the designation does not extend to representing the affiliated bargaining agencies in jurisdictional dispute proceedings. Thus, we do not accept that Local 721 is a privy of the International.

54. Finally, it is argued that the Board ought to exercise its discretion and decline to entertain this dispute. As is indicated above, we concur with the comments of counsel that this Board ought to support and encourage alternative dispute resolution mechanisms agreed to by the parties. Where such a mechanism has been agreed to, this Board would require compelling reasons to enquire into the dispute. However, we are also of the view that parties cannot be bound to an alternative dispute resolution mechanism without their consent. The Board is statutorily mandated to determine jurisdictional disputes. While the Board has a discretion to not entertain a dispute, we do not believe it is appropriate to exercise such discretion so as to bind a party to an alternative dispute resolution mechanism which it has never agreed to, but rather, has quite vocally opposed.

55. For the foregoing reasons, it is our determination that we will entertain this application. This matter is remitted to the Registrar to be scheduled for one day of consultation. This panel is seized.

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**1380-97-G; 1643-97-G** International Brotherhood of Electrical Workers, Local 353, Applicant v. **Standard Underground High Voltage Ltd.**, Responding Party; International Brotherhood of Electrical Workers, Local 353, Applicant v. **Power Cable Installations (Toronto) Limited**, Responding Party

**Construction Industry - Construction Industry Grievance - Timeliness - Board declining to extend time for grieving under section 48(16) of the Act - Board concluding that union's failure to pursue its strict legal rights because of employer's financial position does not establish "reasonable grounds" for extending time limits contained in the collective agreement - Grievances dismissed**

**BEFORE:** *Lee Shouldice*, Vice-Chair.

**APPEARANCES:** *Elizabeth Mitchell, Michael J. Oram and Steve Knott* for the applicant; *S. Margot Blight and John Hayes* for the responding parties.

**DECISION OF THE BOARD;** October 16, 1997

1. These proceedings consist of two construction industry grievances which have been referred to the Board for arbitration pursuant to section 133 of the *Labour Relations Act, 1995* (hereinafter referred to as "the Act"). These proceedings both came on for hearing before this panel of the Board on September 12, 1997. At that time, counsel agreed that certain preliminary matters raised by the responding parties (hereinafter referred to individually as "Standard Underground" or "Power Cable", or collectively as "the employers", as the case may be) would be dealt with, without the need for oral evidence. On consent, 15 exhibits were placed before me, and certain other facts which were not in dispute were provided to me by counsel. On the basis of that evidence, four separate preliminary arguments raised by the employers were argued.

2. The applicant (hereinafter referred to as "the union") and the employers are bound to the Principal Agreement between the International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario and the Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario which expires on April 30, 1998, and predecessor agreements (hereinafter referred to as "the Principal Agreement"). The union alleges that the employers have failed to pay an "interest charge" contained in the Local 353 Appendix of the Principal Agreement. The clause in that Appendix which creates the obligation is Article 1001(b), which provision reads as follows:

Payments for the Welfare Fund, Vacation Pay Fund, RRSP Fund, Pension Fund, IBEW-CCO Fund, SUB Fund, Other Funds, Union Dues, Training Trust Fund, Industry Stabilization Fund and Association Dues are to be made monthly by the twentieth (20th) day of the following month to the Trust Administrator subject to an interest charge of \$0.08 for each hundred dollars outstanding for each day from the due date to the fund or funds involved. Each Employer shall remit all payments and reports as may be required by the Agreement by the twentieth (20th) day of the month following the month for which they were due. In the event that an Employer fails to remit the required payment and reports by the thirtieth (30th) day of the month they were due appropriate action may be taken retroactively to the twenty-first (21st) day of the month.



There is no dispute amongst the parties that the amounts due from the employers to the union under the Principal Agreement, save and except for this "interest charge", have been paid by the employers. However, the employers have not paid accrued "interest charges" of \$9,622 (for Standard Underground) and \$1825.74 (for Power Cable), which amounts were agreed to only for the purposes of these preliminary motions. The union's grievances relate to these sums, which it claims under the above-noted clause.

3. The parties argued four separate preliminary objections to proceeding with these grievance arbitrations. The employers submit that the grievances are untimely, and therefore that the Board is without jurisdiction to entertain them. Alternatively, it is argued that the interest rate provided under the collective agreement is unenforceable having regard to section 4 of the *Interest Act*, R.S.C. 1985, c. I-18. In the further alternative, it is submitted that the above-referenced clause in the Principal Agreement is unenforceable as it constitutes a penalty clause. Finally, and again in the alternative, it is submitted that, with regard to Standard Underground only, the amounts due prior to July 26, 1995 are no longer due because of Memoranda of Agreement previously executed between that entity and the union. The employers withdrew a preliminary objection that the Board was without jurisdiction to hear that portion of the grievances that arose under the former collective agreements.

4. Having regard to the conclusion I have reached respecting the timeliness of the grievances, it is unnecessary to deal with the other preliminary objections argued by the parties.

5. For the purposes of this preliminary objection, counsel referred to a number of exhibits filed with the Board. The key exhibits consist of a number of "form letters" to the employers from the Toronto Electrical Industry Benefit Administration Services Limited (hereinafter referred to as "T.E.I.B.A.S."). There is no dispute that this entity is the administrator of the trust funds paid by employers bound to the Principal Agreement. The form letters date back as far as August, 1994, and (not surprisingly) generally take the same form. The body of the letter states that the trust fund requires that both payment and a contribution report is to be in the hands of the administrator by the 20th day of the month following the month in which the hours were worked. It notes that "on the current collective agreement, delinquent contributions received after the due date will be assessed a delinquent charge of \$0.08 per hundred dollars per day of delinquency". The letter further notes that the employer's remittances for one or more certain months were received after the date due, and that a delinquency charge of some amount had been assessed. The letter requests payment of the sum by separate cheque, and ends with the following underscored sentence:

"If the funds are not received as soon as possible the Trustees intend to take the appropriate steps to collect the funds by means of action at the Ontario Labour Relations Board."

The letter is signed by Mr. Steve Knott, Executive Administrator of T.E.I.B.A.S., and is carbon-copied to Mr. Joe Fashion, who is Business Manager/Financial Secretary of the applicant.

6. Letters in this same general form (but with different sums and dates) were sent to the employers between August, 1994 and May, 1997. Each was copied to the union through Mr. Fashion. Some of the letters were sent more than once, endorsed as "Friendly Reminders" or, on subsequent occasions, as "Second Reminders". No running total of the amount owed by the employers to any particular date was ever provided to the employers - each of the letters was, to that extent, a "stand alone" document.

7. By way of letter dated June 12, 1997, Mr. Fashion, on Local 353 letterhead, wrote to the responding party Standard Underground (a similar letter was sent to Power Cable on August 8, 1997). The body of the letter reads, in part, as follows:

We have been advised by the Trustees of the Health and Welfare Trust Fund, that your company is delinquent for penalties owing due to remittances being received late or outstanding.

This is a violation of Section 21, clause 1001(b) (enclosed) of the Principal Agreement between the IBEW - CCO and the Electrical Contractors Association - ETBA ...

The Trustees have directed us to recover these outstanding and accruing amounts.

We hereby file a grievance pursuant to section 13 of the said Agreement.

If this matter is not resolved immediately, we will refer this grievance to the Ontario Labour Relations Board. ...

Mr. Fashion followed up this letter on June 18, 1997 with further correspondence identifying the interest charge of \$0.08 per hundred dollars outstanding.

8. Article 13 of the Principal Agreement outlines the Grievance and Arbitration Procedure applicable to the parties to the agreement. The critical provision is Article 1302, which reads as follows:

1302 EITHER PARTY

If either party to this Agreement alleges there has been a misinterpretation, violation or non-application of this Agreement such Party may within five (5) working days of the time they became aware, or reasonably should have been aware of the incident giving rise to the grievance, submit such grievance in writing to the designated representative of the other Party. If the grievance is not settled within two (2) working days at this stage, it may be submitted to the Local Joint Conference Board. Failing settlement at this stage, either Party may refer the grievance to the Electrical Trade Joint Board as in Clause 1300, Step 4.

9. Counsel provided a chart which sets out, for each of the employers, the various amounts claimed by the union, and which identifies the contribution amount, the work month, the remittance due date, the remittance received date and the number of days each remittance payment was late. As noted above, the parties have agreed that the chart is accurate only for the purpose of these preliminary motions.

10. Counsel for the employers submits that the vast majority of the interest charge claims made by the union are untimely, having regard to Article 1302, as qualified by Article 1001. In her submission, Article 1001 has the effect of extending by 10 days the time that the union has to grieve a violation of that provision of the Principal Agreement. Accordingly, for violations of the Principal Agreement obligations contained in Article 1001, Local 353 could grieve up to 15 days after learning of the breach (or after the time that it reasonably should have known of the breach). In counsel's submission, this clause drives one to two conclusions. First, that for remittances due pursuant to Clause 1001, the deadline to file a grievance is effectively 15 days from the date of the breach. Second, if the amounts are paid at any time before the 30th day of the month they were due, the amounts due as an "interest charge" cannot be the subject of a grievance. Any way one considers the various amounts said by the union to be due and owing, it was submitted that the vast majority of those claims are untimely and therefore incapable of remedy.

11. Counsel for the union asserts that the initial T.E.I.B.A.S. letters forwarded to the employers are, in fact, grievance letters. It was noted that at least some of the letters appear to be dated the same date that the employers submitted their late remittances, and therefore appear to have been forwarded to the employers in a timely fashion. Counsel submitted that T.E.I.B.A.S. was an agent for the union and therefore that I could quite easily conclude that the union had grieved the violations of the Principal Agreement within the timeframe reflected by Article 1302 of the Principal Agreement. The only delay was with respect to the actual referral of the grievance to arbitration. With regard to the argument that

Article 1001(b) provides some type of grace period, counsel was of the view that the liability for violations of the Principal Agreement occurred on the first day that the remittance is late, and that no grace period regarding the interest charge was created by the wording of the Agreement.

12. Dealing first with the question of the appropriate interpretation of Article 1001(b), I agree with the essence of the interpretation of that clause argued by counsel for the employers. I can only conclude from the plain wording of the provision that the parties desired to provide a 10 day "grace period" to those companies who pay remittances within the 10 days immediately after they are due. If payments are made within the ten day period, the union will not grieve the violation of the requirement that they be paid within the first 20 days of the month. If payments are made beyond the ten day window, the union reserves the right to claim for damages (including the interest charge) to the 21st day. On the wording of the provision, no other interpretation can really be adopted that makes any sense.

13. Accordingly, a number of the amounts claimed by the union on Exhibits 1 and 2 (those which are identified as having a "remittance date" within 10 days of the "remittance due date") are not properly claimed by the union as they are violations of the Principal Agreement which are not subject to an award of damages. What, though, of the other amounts? Has there been a delay in the filing of these grievances such that they are now untimely?

14. In my view, it is evident that the union has not properly grieved the violations of the Principal Agreement alleged against either Standard Underground or Power Cable. Viewed objectively, the T.E.I.B.A.S. letters are not grievances filed by the union under the grievance procedure provisions of the Principal Agreement. First, the letters are not forwarded to the employers by a party to the Principal Agreement but rather by the Trust Administrator. In conjunction with that observation, there is nothing in the letters to suggest that T.E.I.B.A.S. was sending the letters to the employers as an agent for the union. On their face, the letters appear to be sent on behalf of T.E.I.B.A.S. itself.

15. Most importantly, though, a plain reading of the letters makes it clear that those documents are merely a request by the trust fund that the employers pay money to the fund which the Principal Agreement says they must pay because of their tardy remittance of funds to the trust. True grievances are not recycled two or three times over as "friendly reminders" or "second notices". In that function, the T.E.I.B.A.S. letters are in substance what are commonly referred to as "dunning letters". Accordingly, I do not accept the characterization made by counsel for the union that the T.E.I.B.A.S. letters are grievances for the purpose of the Principal Agreement. The first real grievance filed with respect of these alleged violations of the Principal Agreement is, for Standard Underground, the June 12, 1997 letter from Mr. Fashion, and for Power Cable, the August 8, 1997 letter.

16. It was asserted by counsel for the employers, and not disputed by opposing counsel, that the violations alleged by the employers of the Principal Agreement were in the nature of continuing violations of the Principal Agreement. It is evident that such a characterization of the breaches of the Principal Agreement is, in fact, an accurate one. In the circumstances, then, the vast majority of the amounts claimed by the union in the grievance letters are claimed well beyond the time frame reflected by Article 1302 of the Principal Agreement, as qualified by Article 1002(b) of the Local 353 Appendix. By virtue of the fact that copies of the T.E.I.B.A.S. letters were sent to the union through Mr. Fashion, it can hardly be suggested that the union did not receive almost instant notice of the amounts due by the employers.

17. In the event that I were to find that the grievances were delivered beyond the time frame provided in the Provincial Agreement, both counsel addressed the question of whether I ought to exercise my discretion to extend the time limits provided for grieving these violations of the Principal Agreement in accordance with my authority under section 48(16) of the Act, which reads as follows:



Except where a collective agreement states that this subsection does not apply, an arbitrator or arbitration board may extend the time for the taking of any step in the grievance procedure under a collective agreement, despite the expiration of the time, where the arbitrator or arbitration board is satisfied that there are reasonable grounds for the extension and that the opposite party will not be substantially prejudiced by the extension.

Counsel provided me with the following authorities: *York Gears Ltd.* (1968), 19 L.A.C. 252 (Weatherill); *Automatic Screw Machine Products Ltd.* (1972), 23 L.A.C. 396 (Johnston); *Port Colborne General Hospital* (1986), 23 L.A.C. (3d) 323 (Burkett); *California Marble & Tile Ltd.* (1995), 49 L.A.C. (4th) 174 (Glass); *Plastina Investments Limited* (Board File No. 2647-93-G, unreported decision dated November 30, 1993); *Fernview Construction Limited* (Board File No. 3228-90-G, unreported decision dated April 15, 1991); *Ontario Hydro* [1987] O.L.R.B. Rep. Apr. 574; *Torbridge Construction Ltd.* (Board File No. 1626-96-G, unreported decision dated February 14, 1997) and *Calorific Construction Limited* [1988] O.L.R.B. Rep. Feb. 115. I have reviewed each of these decisions.

18. I will not reproduce here the argument of counsel, except to the extent necessary to explain the result I have reached, and the reasons for that result. It is evident from section 48(16) of the Act that as a prerequisite for exercising the discretion to extend time limits contained in the Principal Agreement, I must conclude both that there exist reasonable grounds for such an extension, and that the employers will not be substantially prejudiced by such an extension. In my view, the party requesting the extension - the union in these proceedings - must establish that "reasonable grounds" for the extension exist. Here, the union has not established to my satisfaction that reasonable grounds exist for such an extension.

19. Counsel for the union focused upon the clarity of the T.E.I.B.A.S. letters, and the fact that they were comprehensive and contained all of the information that the employers needed to know, as a basis for concluding that "reasonable grounds" exist for the extension of the agreed- upon time limits. Furthermore, counsel relied upon a fact conceded by Standard Underground - that Standard Underground was in financial difficulty from 1994 through 1996 because it had not been paid promptly by a large creditor. A series of meetings had occurred between Standard Underground and the union in order to obtain the remittances due under the collective agreement. The union, aware of this financial difficulty, forbore on its strict right to grieve and to refer the grievances to arbitration.

20. I am not persuaded that any of these facts establish "reasonable grounds" for extending the time limits contained in the Principal Agreement. I start my consideration of this factor by observing (as was noted by the Board at paragraphs 27 through 33 of the *Torbridge Construction Ltd.* decision, cited above), that the nature of the construction industry requires that parties conduct themselves in a manner that reflects considerably greater expedition than might otherwise be applied in an industrial context. As was noted by the Board (admittedly in another context, but with applicability to the instant proceeding) in *Robert Dumeah* [1994] O.L.R.B. Rep. June 655, at para. 61:

... Employers in the construction industry must know quickly if challenge is to be made about the operation of their business. Unions must know quickly if a member is going to assert his referral to or discharge from an employer was improperly managed or instigated by the union. Eight months is too long to wait. Work in the industry is too fluid and occasional to impose on parties an industrial standard of "delay". In construction, both employer and union need to know where they stand, and to move on. To sanction disruption months after the event would be significantly disruptive to their relationship and unduly expensive and obstructive.

I have considered the submission that the union has established "reasonable grounds" for the requested extension of time limits in that context.

21. The clarity of the T.E.I.B.A.S. letters does not establish, in whole or in part, a reasonable ground for the extension of the time limits found in the Principal Agreement. The letters do point out,

quite clearly, the amount owed, and the time frame for which the amounts are due under the Principal Agreement. However, the clarity of this information cannot establish a legitimate reason for not grieving the violation of the Principal Agreement in a timely manner. It may well suggest that there is little prejudice to the employer, from one perspective. But it cannot, in my view, establish a legitimate reason for extending the time limits contained in the Principal Agreement.

22. Does the difficult financial situation of Standard Underground during the years 1994 to 1996 suggest a reasonable ground for extending the time limits contained in the Principal Agreement, based on the premise that the union forbore upon its strict legal rights to grieve these violations of the Principal Agreement due to the financial status of Standard Underground? I have very carefully considered this argument. I am of the view that it does not establish reasonable grounds for the extension of the time limits contained in the Principal Agreement.

23. It is evident from exhibits 6, 7, and 8 (and their companion exhibits 11, 12 and 13) that the union filed at least three separate grievances relating to the failure by Standard Underground to pay amounts due to the Trust Administrator pursuant to Clause 1000 and 1001 of the Local 353 Appendix during 1994 and 1995. Memoranda of Agreement were entered into by the parties on each of those occasions, which memoranda were reduced to a Board order. The total amounts of money due to the union pursuant to these Board orders exceeds \$43,000. In light of those grievances, which were brought, referred to the Board, and settled during Standard Underground's troubled financial times, it is difficult to appreciate why the union would forebear on its other claims in that time period. There is no legitimate reason why the union could not have grieved these violations, referred them to arbitration at the same time as the other violations of the agreement, and, if it desired to provide Standard Underground with some breathing space, reach an agreement on that at the same time.

24. In fact, this type of situation is faced by the Board on a regular basis, particularly during poor economic times. Trade unions often grieve violations of their collective agreement, refer those grievances to the Board, and obtain Board orders (on consent or otherwise) requiring the responding party employer to pay a certain sum as damages for violation of the collective agreement. Quite often, there is no hope that the union will ever see the money ordered to be paid. On other occasions, it is likely that the union can recover at least some of the funds, through an accommodation of some nature with the responding party.

25. There is no reason why the union here could not have done the same thing with Standard Underground. To do so would have been consistent with the expectation that construction industry grievances be pursued with some expedition. In the circumstances, I am of the view that the failure of the union to pursue its strict legal rights because of Standard Underground's financial position does not establish "reasonable grounds" for extending the time limits contained in the Principal Agreement.

26. For these reasons, therefore, I am of the view that these grievances must be dismissed in their entirety. In that regard, I note that counsel for the employers conceded during the course of argument that the two most recent "interest charges" for Power Cable were timely. I cannot agree. The chart provided by the parties indicates that the remittances in question were due on May 20 and June 20, 1997, and were paid on June 25, 1997. These amounts were not grieved until August 8, 1997 - well beyond the time frame contained in the Principal Agreement.

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**3950-96-U United Brotherhood of Carpenters and Joiners of America, Local 1072 and Joe Almeida, Applicants v. United Brotherhood of Carpenters and Joiners of America, Responding Party**

**Construction Industry - Trusteeship - Carpenters' union local complaining under Bill 80 provisions of the Act that trusteeship imposed on it by international union without "just cause" - Board finding that Carpenters' local not a construction trade union within the meaning of section 126 of the Act to which provisions of Bill 80 might apply**

**BEFORE:** *R. O. MacDowell*, Chair.

**APPEARANCES:** *L. A. Richmond* and *J. Almeida* for the applicants; *Harold F. Caley*, *David A. McKee*, *Frank Manoni* and *Jerry Kinsella* for the responding party.

**DECISION OF THE BOARD;** October 29, 1997

1. To make this decision easier to read, the applicant union will sometimes be referred to as "Local 1072", the respondent union, the United Brotherhood of Carpenters and Joiners of America, will sometimes be referred to as the "parent international union", and sections 145 to 150 of the *Labour Relations Act, 1995* will sometimes be referred to, collectively, as the "Bill 80" provisions. Trade unions that meet the requirements of section 126 of the Act, (i.e. trade unions "that according to established trade union practice pertain to the construction industry") will sometimes be referred to simply as "construction unions".

**I - Introduction: what this case is about - an overview**

2. In December 1996, the United Brotherhood of Carpenters and Joiners of America ("the parent international union") assumed supervision and control over its Local 1072. In industrial relations parlance, the parent union put Local 1072 "under trusteeship". The parent union suspended the autonomy of the local union and removed or restricted the authority of the local union officers. (See section 89 of the Act, which contemplates that a trusteeship that has been unilaterally imposed can remain in place for one year, and can be extended for a further year, with the consent of the Labour Relations Board.)

3. The applicants assert that the trusteeship was imposed "without just cause", and, accordingly, was contrary to section 149 of the *Labour Relations Act*. Section 149 was added to the Act in 1993 as part of what are commonly referred to as the "Bill 80 amendments". Section 149 reads as follows:

**149.** (1) A parent trade union or a council of trade unions shall not, without just cause, assume supervision or control of or otherwise interfere with a local trade union directly or indirectly in such a way that the autonomy of the local trade union is affected.

(2) A parent trade union or a council of trade unions shall not, without just cause, remove from office, change the duties of an elected or appointed official of a local trade union or impose a penalty on such an official or on a member of a local trade union.

(3) On an application relating to this section, when deciding whether there is just cause, the Board shall consider the trade union constitution but is not bound by it and shall consider such other factors as it considers appropriate.



(4) If the Board determines that an action described in subsection (1) was taken with just cause, the Board may make such orders and give such directions as it considers appropriate, including orders respecting the continuation of supervision or control of the local trade union.

4. The applicants complain that the parent union took over Local 1072 contrary to section 149(1), and dealt with union official Joe Almeida contrary to section 149(2).

5. The parent union replies that there was ample cause for the actions that it took, because the affairs of Local 1072 were in disarray. The parent union claims that Local 1072 has been mismanaged for some time, and that, as a result, the Local had lost large groupings of members to termination applications or "raids" by other trade unions. The parent union points out, for example, that the 700 members of Local 1072 working at Ontario Store Fixtures, have deserted the Carpenters' Union in favour of the United Steelworkers of America, so that, in the result, Local 1072 lost its largest bargaining unit.

6. In counsel's submission, these members were dissatisfied with the quality of service that was being provided by Local 1072 - and so was the parent union. That is why the trusteeship was necessary. The parent union submits that Mr. Almeida is not a member or officer of Local 1072, but even if he was, there was ample justification for taking over the Local, to ensure that its affairs are conducted properly.

7. More fundamentally though, the parent union contends that Bill 80 has no application to a so-called "shop local" like Local 1072. In counsel's submission, Bill 80 only applies to "construction trade unions", and Local 1072 is not a "construction union" - that is, Local 1072 is not a trade union that "according to established trade union practice *pertains* to the construction industry". Counsel contends that Local 1072 cannot challenge the parent union under section 149(1) or 149(2) of the Act, because section 149 does not apply to unions like Local 1072.

8. Before examining this argument in detail, it may be useful to reproduce portions of sections 1, 126 and 145 of the Act. These provisions clarify the application of section 149, and will be discussed in more detail later:

1. (1) In this Act,

• • •

"*construction industry*" means the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at the site.

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#### CONSTRUCTION INDUSTRY

126. In this section and in sections 127 to 168 [the "construction industry" portion of the Act],

• • •

"*employer*" means a person who operates a business in the construction industry, and for purposes of an application for accreditation means an employer for whose employees a trade union or council of trade unions affected by the application has bargaining rights in a particular geographic area and sector or areas or sectors or parts thereof;

• • •

*“trade union” means a trade union that according to established trade union practice pertains to the construction industry.*

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145. (1) In sections 146 to 150 [“the Bill 80” provisions],

*“constitution” means an organizational document governing the establishment or operation of a trade union and includes a charter and by-laws and rules made under a constitution;*

*“jurisdiction” includes geographic, sectoral and work jurisdiction;*

*“local trade union” means, in relation to a parent trade union, a trade union in Ontario that is affiliated with or subordinate or directly related to the parent trade union and includes a council of trade unions;*

*“parent trade union” means a provincial, national or international trade union which has at least one affiliated local trade union in Ontario that is subordinate or directly related to it.*

(2) In the event of a conflict between any provision in sections 146 to 150 and any other provision of this Act, the provisions in sections 146 to 150 prevail.

(3) In the event of a conflict between any provision in sections 146 to 150 and any provision in the constitution of a trade union, the provisions in sections 146 to 150 prevail.

[emphasis added]

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9. At the opening of the hearing there was an issue about whether the named applicants have the “standing” to bring this application. It was said, Mr. Almeida is neither a member nor an officer of Local 1072, and cannot therefore speak on behalf of Local 1072. However, for present purposes, it is unnecessary to resolve that question. It is sufficient to note that among the documents accompanying this application is a petition, with many signatures and the following preamble:

“WE THE UNDERSIGNED being loyal members of the Carpenter’s Union Local 1072, and being proud of said membership, DO HEREBY RESOLVE: that due to the inexplicable actions taken to place our Local under Supervision without having just cause, we be granted access to our Local’s treasury and our dues to commence an action at the Ontario Labour Relations Board under Bill 80 to determine if the said Supervision is justifiable; we further resolve: that the Ontario Labour Relations Board be requested to order said action as it deems advisable.”

10. Obviously, this proceeding is of interest to quite a number of members of Local 1072, on whose behalf Mr. Almeida is purportedly acting; and it seems to me that he is entitled to bring the application on their behalf, whether or not he can represent Local 1072 directly.

11. A more difficult question, is whether the circumstances of this case actually do fall within the ambit of “Bill 80” - which is to say, whether section 149 applies to the relationship between the United Brotherhood of Carpenters and Joiners of America, and its Local 1072. And that turns on whether Local 1072 can be considered to be a “construction union” within the meaning of section 126 of the Act.

12. The background is not really in dispute.

## **II - Background: the parent international union**

13. The United Brotherhood of Carpenters and Joiners of America is an international union with membership in the United States and Canada. Its headquarters are in Washington, D.C. However, the name of the organization is a little misleading. Whatever its roots may have been, the parent union is now much more than a "carpenters union" and the union's membership is not confined to the construction industry.

14. The Constitution of the parent international union makes it clear that the organization is no longer a pure "craft union" - that is, it is no longer a union composed exclusively of carpenters and carpenters' apprentices. Nor does the parent union operate exclusively in the construction industry. Article 6 of the International Union constitution, includes the following passages:

### **JURISDICTION**

A Section 6. The jurisdiction of the United Brotherhood of Carpenters and Joiners of America shall include all branches of the Carpenter and Joiner trade, *the industrial sector, and any kind of work being performed by any members of the United Brotherhood.* In it shall be vested the power through the International Body to establish and charter subordinate Local and Auxiliary Unions, District, State and Provincial Councils in all branches of the trade, and its mandates must be observed and obeyed at all times.

*In view of technological developments and industrial diversification, no type of employment category shall be excluded from the jurisdiction of the United Brotherhood, whether or not spelled out in Section 7.*

The United Brotherhood is empowered, upon agreement of the Local Unions and Councils directly affected, or in the discretion of the General President subject to appeal to the General Executive Board, where the General President finds that it is in the best interests of the United Brotherhood and its members, locally or at large, to establish or dissolve any Local Union or Council, to merge or consolidate Local Unions or Councils, to establish or alter the trade or geographical jurisdiction of any Local Union or Council, to form Councils and to permit, prohibit or require the affiliation with or disaffiliation from any Council by any Local Union, including the right to establish statewide, province wide and regional Local Unions or Councils having jurisdiction over specified branches or subdivisions of the trade. The vested rights of the members shall be preserved and where action as herein described is taken, the General President and General Executive Board shall preserve the membership rights of the members of affected Local Unions, including their right to attend and participate in meetings, to vote, to nominate candidates and to be nominated and run for office or business representative. In connection with the foregoing, the General President may, upon finding it appropriate, appoint a committee to hold hearings upon due notice to directly affected Local Unions or Councils, and make findings and recommendations.

• • •

C To subordinate Local or Auxiliary Unions, District, State and Provincial Councils the right is conceded to make necessary laws for Locals and District, State and Provincial Councils which do not conflict with the laws of the International Body.

D The United Brotherhood of Carpenters and Joiners of America shall have the right to establish supervision over and to conduct the affairs of any subordinate body (including the removal of any or all officers of such subordinate body) to correct financial irregularities or to assure the performance of collective bargaining agreements and the responsibility of the subordinate body as a bargaining agent or to protect the interests and rights of the members or whenever the affairs of the subordinate body are conducted in such a manner as to be detrimental to the welfare of the members and to the best interests of the United Brotherhood, subject, however, to the provisions of Paragraph H of Section 10. The authority granted to the United Brotherhood herein includes the authority to establish supervision to prevent secession or disaffiliation by any subordinate body or bodies.



E The United Brotherhood shall enact and enforce laws for its government and that of subordinate Locals and Auxiliary Unions and District, State and Provincial Councils and members thereof.  
[emphasis added]

15. These provisions give the parent body considerable flexibility to adapt the form of the union organization to changing collective bargaining circumstances, and to control the activities of any subordinate local organization. There is nothing particularly novel about them. However, these constitutional provisions also make it clear that the union can take into membership workers in virtually any industry or employment category. Indeed, section 7 of the parent union's Constitution provides that the union's jurisdiction "covers all kinds of work being performed by members of the United Brotherhood", and that its jurisdictional claim includes not only employees who work with wood in various settings, but also "... public sector workers, health care workers, aerospace workers, and all those engaged in the operation of woodworking or other machinery required in the fashioning, milling or manufacturing of products used in the trade, or engaged as helpers to any of the above divisions or subdivisions, and the handling, erecting, and installing material on any of the above divisions or subdivisions ...".

16. It is evident therefore that the parent international union and its constituent locals are no longer confined to a traditional craft grouping, nor to any particular industry. The parent union is not just a "craft union" or just a "building trades union". Rather, the parent union is now a hybrid organization, representing a mixture of employees in various industrial and commercial settings. And, of course, as a hybrid organization, the parent union can charter subsidiary locals on whatever basis it considers appropriate to facilitate the representation of its diverse membership. Such local unions - as the constitution suggests - need not pertain to the construction industry.

17. On the other hand, in the context of the construction industry, there is no doubt that the Carpenters' Union continues to operate as a standard "building trades union", representing "construction" bargaining units composed of "carpenters and carpenters' apprentices" working in the construction industry - that is, its traditional craft/building trades grouping. For example, the parent international union participates in the scheme of province-wide bargaining "by trade" that prevails in the ICI sector(s) of the Ontario construction industry. (See sections 151-167 of the *Labour Relations Act*.)

18. The parent union is a part of the Employee Bargaining Agency designated by the Minister of Labour to represent carpenters in the province-wide bargaining scheme. Geographically-based "construction locals", like Carpenters' Local 27, (which represents employees in the Toronto area) are also part of the ICI designation. In statutory terms, Local 27 is an "affiliated bargaining agent" (see section 151 of the Act above) which the Minister has named in the ICI designation. Local 27 is one of the local unions that represents employees who work in ICI construction, and is affiliated to the parent international. Thus, members of Local 27 work on ICI construction sites, pursuant to the Carpenters' provincial collective agreement, negotiated by the employee bargaining agency of which Local 27 and the parent international union are both a part. By contrast, Local 1072 is *not* mentioned in the Ministerial designation at all, Local 1072 is *not* part of the Carpenters' Employee Bargaining Agency, and Local 1072 has *not* participated in the provincial bargaining process that covers unionized carpenters working in ICI construction. In other words, Local 1072 is not part of the province-wide bargaining institutions or process that sets the terms and conditions of employment for unionized carpenters in the construction industry.

19. There is no dispute, therefore, that the parent union and Local 27 are both trade unions "that according to established trade union practice *pertain* to the construction industry". They bargain and function as "construction unions" for the purposes of sections 127-168 of the Act; and, as such, they routinely represent construction workers and participate in collective bargaining institutions that operate in the construction industry. Accordingly, if Local 27 had been put under trusteeship by its parent

international union, there is no doubt that the parent union would have had to establish "just cause" under section 149 of the Act. Bill 80 clearly applies to Local 27.

20. But does Local 1072 fit within these parameters?

21. Local 1072 is a subsidiary body chartered by the parent international, just like Local 27; but is Local 1072 also a "construction union" within the meaning of section 126, so that its members can also seek the protection of section 149?

22. In answering that question, it may be useful to sketch in something of the origins of Local 1072, and how Local 1072 currently functions.

### **III - Background: the origins and functioning of Local 1072**

23. Most of the members of Local 1072 work in *manufacturing facilities* that make products such as: doors, door frames and trim; cabinets; counters; cupboards; shelves; display cases; and similar store fixtures. These union members work in plants or "shops" - not on construction sites (hence the description of Local 1072 as a "shop local"), and their employers are industrial enterprises - not construction companies.

24. The products manufactured in these plants are purchased by customers who use them either in the course of new building construction or for the renovation of existing premises. Sometimes the on-site installation of these fixtures is done by the customer, or by a subcontractor arranged by the customer. Sometimes the on-site installation is done by the manufacturer itself, using members of Local 1072. And sometimes the manufacturer has a sister company for installation purposes, which has a separate collective agreement with a "construction" local of the Carpenters' union (such as Local 27 in the Toronto area). The arrangements vary, depending upon the needs of the customer and the obligations of the manufacturer.

25. Local 1072 has collective-bargaining relationships with a number of these manufacturers, and negotiates collective agreements to cover the employees whom it represents - be they in the plant or, on occasion, on a construction site, when they are required to install their employers' products. From time to time, therefore, some members of Local 1072 may find themselves working on a construction site in association with - or at least in proximity to - construction workers.

26. However, Local 1072's collective agreements with these industrial employers do not look at all like "construction-industry" collective agreements. Nor do they encompass pure craft bargaining units (i.e. units consisting solely of carpenters and carpenters' apprentices), or even bargaining units of construction workers. Rather, the Local 1072 collective agreements cover what might be described as standard "plant production" or "all employee" bargaining units, encompassing all of the non-managerial, blue-collar workers employed in the plant. These industrial bargaining units include classifications such as: finishers, machine operators, painters, storekeepers, shipper/receiver, truck driver, warehouse attendants, general helpers, etc. The individuals in these classifications are, of course, neither "carpenters" nor "construction workers".

27. The terms and conditions of employment settled in these collective agreements are typical of what one might find in an industrial plant; and conversely, are quite different from what one might find in a "construction industry" collective agreement. In this respect, Local 1072 looks very much like any "industrial union" - such as the Canadian Auto Workers, or the United Steelworkers of America (the union that displaced Local 1072 and now represents the plant employees at Ontario Store Fixtures - see above). The bargaining that produces these "shop agreements" takes place either on a plant-by-plant basis, or through an association of fixture manufacturers. There is no evidence that construction

locals of the Carpenters' union are involved in that bargaining process, or that, on the "employer side of the bargaining table" there is any involvement by traditional construction companies.

28. I recognize that the terminology in the previous paragraph begs the question of whether a manufacturer may also be said to carry on some part of its business in the "construction industry", when, on occasion, it is asked to install its products on a construction site. Perhaps it is. But for present purposes, it is sufficient to say that this is only a tiny aspect of the manufacturers' overall business, and on the evidence before me, has not been sufficient to draw these employers into the employer bargaining or institutional arrangements pertaining to the construction industry. These employers conduct themselves - in business and in bargaining - like industrial enterprises.

29. Nevertheless, there is no doubt that, from time to time, *some* Local 1072 members install their employer's products on the customers' job sites, so that, from time to time, *some* members of Local 1072 arguably do *some* "construction work". However, the number of installers is quite small relative to the total Local 1072 membership, and the volume of installation work is also quite small - depending upon whether the particular plant has an installation crew, the buoyancy of the market, the arrangement with the particular customer, and so on. Thus, while it is fair to say that some component of Local 1072's members are sometimes engaged in "construction" activities on a construction site, they are a tiny minority, relative to the overall union membership, and the overall volume of work performed by members of Local 1072.

30. A number of Local 1072's collective agreements with manufacturers do not contemplate the performance of on-site installation work at all. But others do; and, where that is the case, the agreement typically provides that the installers will be paid for on-site work, at the construction industry wage rates prevailing in that area. In effect, the Local 1072 agreement "picks up" the wage rate from the applicable (usually the ICI) construction industry collective agreement.

31. However, the Local 1072 collective agreements do not incorporate *all* of the features of the construction agreement prevailing in the area in which the job is located. Nor do Local 1072 members actually work under the prevailing "construction agreement" while they are on the construction site. For example, when an installer is sent to work on an ICI construction site, he is not dispatched through a union hiring hall, and there is no deduction of welfare benefit amounts as prescribed in the ICI collective agreement. Such deductions are provided, if at all, in Local 1072's "home collective agreement" which is the one that governs (or so the parties say) when a Local 1072 member is on a construction site.

32. The installation clauses in the Local 1072 collective agreements take various forms. Here are some examples drawn from Local 1072's collective agreements with Global Store Fixtures, D&H Custom Woodworking Ltd., and an employer association known as the Canadian Woodwork Manufacturers Association:

#### ARTICLE 22 - INSTALLATION

**22.01** It is understood that the Company is entitled to assign employees covered by this Agreement to install on a job site, any material upon which preparatory work has been performed at the Company's plant and/or plants. Such assignment on the job site shall not exceed two (2) employees plus one (1) Foreman, where deemed necessary by the Company, (all of whom shall be Union members in good standing).

**22.02** Where such installation is made within the geographic area covered by this Agreement, installer employees shall be paid the appropriate rates of pay as provide [sic] in the Collective Agreement between the Carpenters Bargaining Conference and the Toronto Construction General Contractors Association.



- 22.03 When installers from the shops are sent out to install outside the geographical area covered by this Agreement, they shall be paid the appropriate rates of pay as provided in the Collective Agreement between the Carpenters Bargaining Conference and the Toronto Construction General Contractors Association, plus travelling time, mileage or train fare and living expenses as provided in this Agreement.
- 22.04 Where the Company requires employees for installation beyond the numbers provided herein, they shall be hired through the office of the Carpenters and Joiners of America, or if outside of the geographical area covered by this Agreement, they shall be hired from the Local Union or Council of the UBCJ of America which holds jurisdiction within the area where such installation must be performed all of which must be members of the Union and in good standing in the Local where they hold their membership.

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Installers while performing work on installation sites, shall be governed by the terms and conditions and wages of the United Brotherhood of Carpenters and Joiners of America in whose jurisdiction the work is being performed. At no time will the hourly rate be less than the rate for Union Carpenters in the grand River Valley District.

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#### ARTICLE 21 - INSTALLATION

- 21.01 It is understood that the Employer is entitled to assign employees covered by this Agreement to install on a job site any material upon which preparatory work has been performed at the Employer's plant and/or plants. Where such installation is made within the geographical area covered by this Agreement, such assignment on a job site shall not exceed two (2) employees plus one (1) foreman where deemed necessary by the Employer, (all of whom shall be Union members in good standing).
- 21.02 Employees assigned to such installation work on a job site shall be supplied with an installation permit, to be issued without charge by the Union steward, who shall send a copy of such permit to the Union and to *Local 1072*. Following completion of the installation assignment, the original permit shall also be sent by the Union steward to the Union and an appropriate notice to *Local 1072*.
- 21.03 Where such installation is made within the geographical area covered by this Agreement, installer employees shall be paid the appropriate rates of pay as provided in the Collective Agreement between *Local Union 27* and the General Contractors' Section of the Toronto Construction Association.
- 21.04 When installers from the shops are sent out to install outside the geographical area covered by this Agreement, they shall be paid the appropriate rates of pay as provided in the Collective Agreement between *Local Union 27* and the General Contractors' Section of the Toronto Construction Association, plus travelling time, mileage or train fare and living expenses as provided in this Agreement.
- 21.05 Where the Employer requires employees for installation beyond the numbers provided herein, they shall be hired through the office of *Local Union 27*. If after two (2) working days notice, *Local Union 27* fails to supply such qualified installation carpenters, the Employer shall be entitled to assign such additional employees covered by this Agreement (who shall be Union members in good standing), as are required to complete the installation on the job site, subject to the supply of an installation permit as provided for in this Article.

33. As will be seen, each of these clauses links *some* of the terms applicable to *Local 1072* members to provisions or arrangements negotiated for construction workers. However, as noted, *Local 1072's* members do not actually work pursuant to the applicable "construction" agreement, and their numbers are quite limited. If there is any significant amount of installation work to be done, the

employer is required to hire through the applicable “construction” local’s hiring hall (Local 27 in the Toronto area).

34. Every Carpenters’ local - including Local 1072 - issues its members a “working card” to establish “membership in good standing”. These documents are not needed in the plant. They are only needed on a construction site, in the event that a member of Local 1072 is challenged by a union representative, and asked to establish that he is properly on the site (i.e. that he is a member of the union in good standing). So, for the vast majority of Local 1072 members, these documents are unnecessary and redundant.

35. Local 1072 is sometimes referred to as a “shop” or “industrial” local of the Carpenters’ union. But for completeness, I might note that Local 1072 is not the only Carpenters’ Local to have what might be described as a “shop agreement” with employers. In fact, it appears that Local 27 - clearly a “construction union” - has a collective agreement with Ideal Railings Ltd., that covers a bargaining unit framed as follows:

All employees of Ideal Railings Ltd. working at and out of Metropolitan Toronto, save and except foreman, persons above the rank of foreman, office sales and clerical employees ...

This, too, is a standard “all employee” plant production bargaining unit which is not composed of either carpenters or construction workers.

36. No one suggests that a “construction union” like Local 27 cannot enter into an “industrial” or “shop” agreement. Indeed, the constitution of the parent union makes it clear that both the parent union and its Locals *can* represent industrial workers. Moreover, the 1990 by-laws of Local 27 specify that Local 27 has “a construction section, a resilient floor section, and an *industrial section*”. The by-laws of Local 27 expressly contemplate that it may represent “industrial” workers, as distinct from those employed in “construction”. So it should come as no surprise that Local 27 has a collective bargaining relationship with a manufacturer.

37. The Ideal Railings agreement and the reference in the Local 27 by-laws merely underline the point made above: that the line between “construction” and “non-construction” is not as clear as it might first appear. As a practical matter, it is difficult to determine what is “construction” work and what is not (see the definition set out above); and even organizations that are clearly “construction unions” under section 126 of the Act, may enter into agreements that are not limited to a particular craft or confined to the construction industry. That is why the application of section 126 is essentially a line-drawing exercise, in which the Board must evaluate the mix of union practices before it, in order to determine whether the subject organization is, in fact, a “construction union” within the meaning of section 126. And, of course, once a trade union is a “construction union” within the meaning of the Act, it may acquire the rights and obligations of a “construction union” - the application of Bill 80 amendments, potential access to the speedy arbitration provisions of section 133 of the Act, different rules on an application for certification or termination of bargaining rights, and so on.

38. All of the “locals” of the Carpenters’ union are constitutionally linked to - indeed, are the creation of - the parent international union. Membership in a particular Local automatically carries with it membership in the parent union, and members and officers of each local union must abide by the constitution and by-laws of the parent union. Under the parent union’s constitution, members are equal and can transfer their membership from one Local to another. The by-laws of the local union cannot conflict with the Constitution and by-laws of the parent organization.

39. On the other hand, it does not follow that every local subdivision of the parent union is itself, or necessarily, a “construction union” within the meaning of section 126.

40. The by-laws of Local 1072 do not contemplate the kind of internal subdivision found in the by-laws of Local 27 (i.e. "construction", "resilient flooring", "industrial"). The by-laws of Local 1072 do not spell out whether the Local is or is not a "construction union" (let alone an organization that might meet the test of section 126 of the Act). The Local 1072 by-laws do recognize that it is a creature of the parent union, and that it must conform to the parent union's constitution, and the territorial jurisdiction of Local 1072 is defined (like that of Local 27) with reference to the next nearest geographically-based local.

41. But just as Local 1072's collective agreements do not look like construction industry collective agreements, the by-laws of Local 1072 do not contain the kind of mechanisms that one typically finds for "construction unions" - a hiring hall system for example. On the other hand, the by-laws do contemplate that the organization has at least "something" to do with the construction industry, because section 24 of Local 1072's by-laws prohibits a member from using "his/her own power tools and equipment while working for the employer whether in the plant or *on the job site*". This provision is an express recognition of the fact that Local 1072 members may sometimes find themselves working on a construction site - that is, that they may sometimes be doing construction work in a construction environment.

42. As I have already noted, Local 27 and Local 1072 are both locals, and thus both creatures, of the parent international union. But there is more to the relationship between Local 1072 and Local 27 than this constitutional connection, or the fraternal relations that one might expect, because some Local 1072 members may sometimes be working in conjunction with members of Local 27 (see the collective agreement clauses reproduced above). There is a historical link as well, because, the bargaining rights and collective agreements now held and administered by Local 1072 were, for a short period, held and administered by Local 27. At one time, what is now Local 1072, was actually *part* of Local 27 - comprising the so-called "industrial section" of Local 27 mentioned in the Local 27 by-laws.

43. This history is worth a brief digression.

44. Prior to 1989, the Carpenters' "shop Local" was numbered and known as Local 2689. Local 2689 was virtually identical in form and function to the current Local 1072. Local 2689 had collective agreements with many of the same manufacturing employers, and conducted itself in much the same way as Local 1072 does today.

45. However, in 1989, Local 2689 and Local 27 were amalgamated. Local 2689 disappeared, the members of Local 2689 became members of Local 27, and the collective bargaining rights formerly held by Local 2689 were assumed by Local 27. Local 2689 ceased to exist as a separate entity and became the "industrial section" of Local 27.

46. Following its merger with Local 2689, Local 27 - the "construction local" - "stood in the shoes" of Local 2689, and continued to sign collective agreements with the manufacturers that had formerly dealt with Local 2689. This situation prevailed for about three years. However, in 1992, the parent union concluded that the amalgamation had been a mistake, so that, in accordance with the parent union's constitution, the "industrial section" of Local 27 was hived off and transferred (or transformed into) the newly-formed Local 1072.

47. As a result of the rebirth of a separate "shop local", workers who had once been members of Local 2689, and then had become members of Local 27, now became members of the new local, numbered 1072. Similarly, employers who had been dealing with Local 2689, then later with Local 27, were now required to deal with Local 1072. And so far as I am able to determine, collective bargaining went on much as before, with Local 1072 negotiating "shop agreements" along the lines described above - just as Local 2689 had done for many years.



48. In essence, after about three years, the parent union reverted to its former organizational structure, whereby members working in an industrial setting would have their own separate “shop local”. There was no objection to this from Local 27, or from the union members who were being transferred to the new “shop local”, Local 1072.

#### **IV - Bill 80: an overview**

49. Until relatively recently, there was very little in the *Labour Relations Act* regulating the internal affairs of a trade union. Of course, a trade union was required to provide its members with certain constitutional and financial information (sections 91-93), there were rules about the conduct of strike and ratification votes (section 79), and there were limits on how long the autonomy of a “local union” could be suspended (section 89). However, the Act was largely silent about the internal administration of the organization, and said nothing about such matters as: the conduct of union elections; the rights of union members; the selection, qualifications, or authority of union officers; the creation, dissolution or merger of “local unions”; the geographic or work jurisdiction assigned to those locals; dues structures; the collection or management of union funds; and so on. Those aspects of the union organization were governed - if at all - by the union constitution, (which was a “contract” between the members that ultimately had to be interpreted and applied by the Courts). An unhappy union member or union officer had no access to the Labour Relations Board, because there was no statutory foundation for filing a complaint about the internal affairs of the trade union.

50. This long-standing policy of non-intervention was modified by the *Labour Relations Amendment Act, 1993* (“Bill 80”), that received Royal Assent on December 14, 1993. Bill 80 marks a clear departure from past approach. It added to the statute what are now sections 145-150 of the *Labour Relations Act, 1995*: a package of provisions that regulate some of the internal workings of a trade union, as well as give the Board the authority to scrutinize the relationship between parent and local union.

51. The Bill 80 package has several interrelated components.

52. Section 145 is definitional, is reproduced above, and will not be repeated here. Section 146 makes a local union the joint bargaining agent in certain collective-bargaining relationships where, formerly, the parent union was the exclusive bargaining agent; so that, in the result, the local will have more influence over matters formerly dealt with exclusively by the parent. Section 147 prevents a parent union from altering the jurisdiction of the local union without just cause. Similarly, section 149 prevents a parent union from suspending the autonomy of a local union or removing local officers “without just cause”. (For a general discussion of Bill 80 see: *International Brotherhood of Electrical Workers*, [1996] OLRB Rep. Feb. 70 at paragraphs 76-79, and *Dorington Smith*, [1996] OLRB Rep. July/August 621 at paragraphs 34-48.)

53. Sections 145-150 are situated in the “construction industry” portion of the *Labour Relations Act*, where, by virtue of section 126, the word “trade union” means a “construction union” - that is, a trade union that “according to established trade union practice PERTAINS to the construction industry” (section 126). Accordingly, Bill 80 applies only to “section 126” “construction unions” - not to trade unions generally. Only a “construction union” or a member or officer of a “construction union”, as defined by section 126, can challenge the justice of a trusteeship, can question the removal of local officers, and so on. Members of “non-construction” unions do not have these rights. For them, the law remains as it was before - continuing the policy of “non-intervention” in internal union affairs.

54. However, while the policy thrust of Bill 80 is clear enough, the limitation to its application is not as precise as might first appear, and creates some potential anomalies to which counsel referred in argument. In particular, when a union operates both in and outside the construction industry, the

statutory rights of its members may depend on which local they belong to. Members of "construction locals" can challenge the parent organization, while members of other locals cannot. In consequence, members of the same union may have equal rights under their union constitution, but different rights under the *Labour Relations Act*.

55. Sometimes, it is easy to distinguish a "construction union" from an organization that is not a "construction union". But, the statutory definition of "construction" is exceedingly wide (see above); and as I have already mentioned, in the real world of collective bargaining, trade union organizations do not fall so neatly, or exclusively, into the category of "construction" or "non-construction". For example, industrial unions like the United Steelworkers of America or the Canadian Energy and Paperworkers Union, may well represent employees, in an industrial setting, who routinely do work which fits the statutory definition of "construction" (painters, millwrights, plant electricians, plumbers, or others who may do building repairs or renovations). The Canadian Union of Public Employees (CUPE) or the Service Employees International Union, can also represent workers of this kind in a municipal or hospital setting, where, again, the distinction between "maintenance" and "repair" may be difficult to draw.

56. Accordingly, in each of these cases, (and they are only illustrative of the problem) an "industrial union" may have members who do "construction work" as defined in the statute; and if there is a permanent maintenance crew, those industrial union members may be regularly doing what might be considered "construction" work. Conversely, an organization like the International Brotherhood of Electrical Workers (IBEW) - which is undoubtedly a building trades craft union (among other things) - may also represent employees in municipal electrical utilities or in industrial plants, who do not do construction work, and who work under collective agreements that do not obviously pertain to the construction industry. Likewise, the Labourers International Union Local 183 - clearly a "construction union" in some contexts - often represents employees who do not work in a construction setting (janitors, cleaners or apartment superintendents, for example).

57. In summary, just as "non-construction unions" can represent employees who do construction work, "construction unions" may sometimes represent employees outside the construction sphere. Yet the Legislature has determined in Bill 80, that the regulation of internal union affairs should apply only to "section 126" "construction unions" - a determination that makes the distinction legally significant, and can pose a definitional problem like the one raised in this case.

58. It seems clear that if a trade union like CUPE takes over one of its Locals (as happened recently with the Toronto Civic Employees Union, Local 43), unhappy officers or members of the local would have no recourse under section 149. Nor would members or officers of a local of the United Steelworkers of America (headquarters in Pittsburgh), or the Doll and Toy Workers Union (headquarters in New York). None of these organizations has ever been considered to be, or found to be, unions "that according to established trade union practice pertain to the *construction industry*" - even though, as noted, such industrial unions may have members who do "construction work". Accordingly, unhappy members of these industrial organizations have no recourse to the Labour Relations Board if the parent union unjustly suspends the autonomy of a local, unjustly removes local officers, changes the terms of the local by-laws, penalizes members, etc.

59. By contrast, it is not disputed that Carpenters' Local 27 is a "construction union", and so is its parent international; so that if the parent union were to interfere with Local 27's affairs, Local 27 and its members could require the parent to establish "just cause" under section 149 of the Act. It is also evident that the parent union in this case is one of the "construction unions" that are the specific subject of scrutiny under Bill 80; moreover, the behaviour under review in this case is the *kind of behaviour* that Bill 80 was designed to regulate. In other words, this case involves both one of the

“parent unions” that was the target of Bill 80, as well as the kind of situation or “mischief” to which Bill 80 is directed.

60. So if Local 27 had been put under trusteeship, there would be no doubt that the Board could enquire into the complaint.

61. But what of a so-called “shop local” like Local 1072?

62. Is Local 1072 a “construction union”?

63. Is Local 1072 in a different position from Local 27, of which it was once a part?

64. The resolution of these questions depends upon the interpretation of section 126 of the Act.

#### **V - Is Local 1072 a “section 126” “construction union”?**

65. Section 126 has been part of the legislative scheme for more than three decades, but it has seldom been the source of much controversy. As the Board observed recently in *Ontario Hydro*, [1997] OLRB Rep. January/February 82 at paragraph 94:

withstanding that the definition of “trade union” now in section 126 of the Act, has been in the legislation since 1962, there is little jurisprudence on it, and what there is does not offer much in the way of analysis or assistance.

66. It may be useful to begin, therefore, with the words of section 126 itself.

67. I will then turn to the purpose of the section and the only recent decision which has given it much thought (albeit not in a “Bill 80 context”).

\* \* \*

68. Before section 126 is engaged, an organization must first be a “trade union” within the meaning of section 1(1) of the Act. It must be “an organization of employees formed for purposes that include collective bargaining”. There is no doubt that Local 1072 meets that test.

69. However, not all “trade unions” are “construction trade unions” for the purpose of the special regulatory scheme applying to the construction industry (sections 126 to 168 of the Act). To fall within that regulatory ambit, a trade union must meet an additional requirement. Section 126 provides that the trade union must be one that:

“According to established trade union practice pertains to the construction industry”.

70. Section 126 is designed to restrict the application of the construction provisions of the Act to trade union organizations that have historically been part of the construction industry. That is the significance of the word “established” in section 126. And the term “construction industry” is defined as follows:

“construction industry” means the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels bridges, canals or other works at the site.

71. The words “pertains” or “pertaining to” have been defined in a number of different ways, including: to belong or relate to; to be within the sphere of; to bear upon, concern, touch or focus on; to be appropriate for; and, to connect, involve, belong or associate with. However, I do not think that it



helps very much to list these various choices, because each one has its own elasticity and shade of meaning. And, of course, the words really take their colour from the context in which they are used.

72. What is relevant in this context, is that the word "PERTAINS" connotes a *relationship* or *connection* - in this case between the union whose status is in dispute and the rest of the construction industry. Moreover, that connection is measured with reference to *ESTABLISHED trade union practice* - of the disputed organization, and in the construction industry generally. The statutory reference point is the way in which construction trade unions *already* organize and conduct themselves - that is to say, their "established" practices.

73. The interpretation of section 126 is not a purely linguistic exercise. Nor is the required connection with the construction industry a purely conceptual one. The operative phrase is not merely "pertains to the construction industry". Rather it is: "*according to established trade union practice* pertain(s) to the construction industry". The emphasized words are significant, because they give section 126 its own historical reference point: the established practices of construction unions in the construction industry - that is, the way that these unions customarily go about their business and interact with one another and with employers. The terms "established" and "practice" require the Board to look at entrenched customs, conventions or routines that prevail in the construction industry - rather than, say, behaviour or arrangements that are uncommon or idiosyncratic or uncharacteristic of construction-industry practice.

74. It seems to me, therefore, that in deciding whether a trade union organization is a "section 126 union", one has to look at how Local 1072 has conducted itself in relation to the construction industry, and how it fits (or doesn't) within the matrix of trade union practices prevailing in the construction industry. That is a fact-finding exercise, not a linguistic one. The answer is found by looking at the industry, not by looking in a dictionary. What one has to consider are such factors as: the constitution of the disputed union; the union's organizational history, antecedents or associations; the union's organizational base and collective-bargaining practices; the kinds of employees and bargaining units that it represents; its relationship with its parent union and other trade unions - particularly construction unions; its relationship with employers, noting particularly whether, or the extent to which, those employers carry on business in the construction industry in whole or in part; and so on - all weighed against the background of "established trade union practice" in the construction industry (i.e. the practice of *construction trade unions*, because the definition of trade union in section 126 applies "*in this section* and in sections 127-168").

75. One has to look at how the disputed organization is structured and how it functions, then compare that pattern to the structure and functioning of union organizations and institutions that are unquestionably part of the construction industry.

76. This was the exercise undertaken by the Board in the *Power Workers' Union* decision, mentioned above.

77. In the *Power Workers Union* case, the Board had before it an application for certification filed by the PWU - which is an organization formerly known as the "Ontario Hydro Employees' Union" and is or was affiliated to the Canadian Union of Public Employees. The PWU asserted that although most of its members were not construction workers, it was nevertheless a "construction trade union" within the meaning of section 126 of the Act, because its big bargaining unit of Ontario Hydro employees included quite a number of workers who regularly did "construction work". The PWU argued that if it represented large numbers of "construction workers", who regularly did construction work, the PWU was necessarily a "construction union" within the meaning of section 126 of the Act. The PWU asserted that the "practice" that mattered was its own practice of having among its members, individuals who regularly did construction work.

78. The situation was described by the Board in a long passage to which I might usefully refer:

116. Ultimately, what it all comes down to is this. For approximately 60 years, the organization which is now called the PWU has represented an all employee bargaining unit of employees of Ontario Hydro. Although this bargaining unit has always included a significant number of employees who have performed construction work, the bargaining unit has always been primarily a non-construction bargaining unit. The PWU bargaining unit is much closer to the non-construction end of the work spectrum at Ontario Hydro than it is to the construction end. The evolution of the PWU reflects operational developments at Ontario Hydro, and the development of parallel but not mutually exclusive work forces: namely, the primarily maintenance/non-construction work force represented by the PWU on one hand, and the primarily construction work force represented by the building trades unions on the other. This is reflected in the jurisdictional dispute litigation, and the two Accords entered into in an effort to resolve the jurisdictional struggle between the PWU and the building trades unions, and even in the PWU's own campaign literature in the referendum it conducted before bringing its applications herein.

117. What does a construction trade union look like? A construction trade union does not have to restrict itself to representing one or a few trades. Most non-building trades construction unions do not, and not even all building trades unions do so outside of the ICI sector. A construction trade union does not have to operate a hiring hall, although the vast majority do. A construction trade union doesn't have to operate an out-of-work list (i.e. a list of unemployed members who can be referred to employers who are obliged to hire unemployed members before they can hire "off the street") but there are few (if any) which don't (even Teamsters Local 91 in Ottawa which does not operate a hiring hall as such keeps an out-of-work list). A construction trade union does not have to operate health, welfare, pension or other benefits plans, either jointly with employers or alone, or operate a training or apprenticeship program, but most do. A construction trade union does not have to have or aspire to bargaining rights with more than one employer, but again, most do. Although a union does not *have* to have any of these characteristics in order to be a construction trade union, the fact is that every construction trade union of which the Board is aware (both on the materials before the Board in this case, and as the expert tribunal in the field) has at least some of them. That is, these characteristics indicate the *practices* which have become established in the construction industry. The fewer of these characteristics that a trade union has, the less likely that it is construction trade union. The PWU has *none* of them.

118. The PWU has made an attempt to take on some of the characteristics of a construction trade union by entering into the agreement cited at paragraph 91, above, and by amending its constitution to include a "Power Workers' Union Construction Council". These envisage a separation between the existing PWU bargaining unit at Ontario Hydro and the bargaining units it seeks to represent in its applications herein, and a hiring hall for the latter. However, the PWU's "Construction Council" is an empty vessel, and in these applications the PWU relies on its existing primarily non-construction bargaining unit in support of its assertion that it is a section 126 or construction trade union.

119. Further, the PWU has always looked and acted like a non-construction trade union. It has always represented an all employee bargaining unit, albeit a large (both in number and geographic area) and diverse one. The PWU has always conducted itself as though it is governed by the "general" provisions of the Act, not the construction provisions, both generally and in matters relating to collective bargaining with Ontario Hydro (or other employers). For example, the PWU has never applied for certification under the construction industry provisions of the Act, it has sought conciliation as a non-construction trade union, it has never tried to refer a grievance to the Board under (what is now) section 133 of the Act (an expedited arbitration provision available only to construction trade unions), in its jurisdictional litigation it has conducted itself like a non-construction trade union, and in its dealings with Ontario Hydro (in matters of hiring, for example) it has not conducted itself anything like a construction trade union.

120. But most importantly, the one thing that a trade union absolutely must do in order to be a construction trade union, is represent at least one bargaining unit of construction employees; that is, a bargaining unit composed at least primarily of construction employees separate and apart from other employees. This the PWU has never done.

121. In the result, I reject the PWU's first and main proposition. I also reject its second proposition, and I do so for similar reasons.

122. The PWU argues that it is appropriate to incorporate the definition of "construction industry" into section 126 so that the latter reads:

"trade union" means a trade union that according to established trade union practice pertains to the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipelines, tunnels, bridges, canals or other works at the site.

That is: a trade union which has collective bargaining dealings with a construction industry employer who satisfies the section 126 definition of "trade union".

123. The PWU points out that the Board has interpreted the section 126 definition of employer as meaning that any employer which operates *any* part of its business in the construction industry is a construction industry employer for purposes of the Act. As the Board put it in *Briecan Construction Limited, supra*: "... if an employer employs workers performing construction work then he is an employer in the construction industry for purposes of the construction industry provisions of the Act." (See also *Risdale Steel Fabricators Ltd., supra*.)

124. What the PWU suggests with respect to incorporating the definition of "construction industry" into the section 126 definition of "trade union" is probably correct. However, the conclusion it draws from the resulting paraphrasing of the definition ignores the "established trade union practice" component of the definition. That is, the PWU cannot establish that the way that it "pertains to" or deals with construction industry employees accords with the established trade union practice in that respect. It displays none of the practices which are characteristic of section 126 trade unions; and, most importantly, it has never represented a separate primarily construction bargaining unit.

125. I also note that the section 126 definition of "employer" does not mirror the section 126 definition of "trade union". It specifically does not contain a phrase analogous to "according to established trade union practice pertains to the construction industry". Further, although it may raise a question about the Board's approach to who is an employer in the construction industry, it surely cannot be that any trade union which has a collective bargaining relationship with any employer which has any part of its business in the construction industry is a section 126 trade union. If that were so, there are many trade unions which might be surprised to learn that they are construction trade unions. For example, many School Board's have been found to be employers in the construction industry. If the PWU's position was sustained, it would mean that the Ontario Secondary School Teachers' Federation, and all the other teachers' unions, would satisfy the section 126 definition. So would the Locals of the Ontario Public Service Employees Union which represent occasional teachers at some School Boards, and the various CUPE Locals which represent maintenance or other staff at various School Boards. In short, it would render the distinction which the Act clearly draws between the construction and non-construction trade unions virtually meaningless. I therefore reject that proposition as well.

126. Indeed, although in these proceedings, the PWU asserted it is a construction trade union for the purposes of the Act, it is apparent that prior to these proceedings it had a different and more accurate assessment of its status; namely, that it was not a construction trade union. The PWU incorrectly thought that it could become a construction trade union by raiding IBEW Local 1788, apparently overlooking the fact that it had to already be a construction trade union before it could successfully conduct such a raid.

79. Portions of this passage (particularly paragraph 120) suggest that unless a trade union represents at least one bargaining unit composed exclusively or primarily of construction employees, who bargain separately and apart from other employees, the organization cannot be a "construction trade union" for the purposes of section 126 of the Act. This criterion is advanced as an absolute prerequisite - a kind of litmus test which any true "construction union" must pass. If the disputed trade union does not have a history which includes this particular practice - representing at least one more or



less “pure” construction bargaining unit - then the disputed organization cannot be a “trade union that according to established trade union practice pertains to the construction industry”. And it does not matter that other established practices - of that union, or other unions, or in the industry - may suggest a contrary conclusion.

80. However, it is evident from other portions of the decision in the *PWU case* that the Board also looked at *other* aspects of trade union practice, and *other* characteristics of construction unions with which the practice and character of the PWU were compared. While the Board asserted that there is one indispensable condition for an organization to be a “construction trade union” (that it represent at least one “pure construction” bargaining unit), the Board went on to examine a number of other areas where the PWU’s organization or practice were also found wanting.

81. The Board held that the language of section 126 should be read restrictively, so as to distinguish as clearly as possible, between those unions that are caught by the special construction provisions of the Act, and those that are not. And from that perspective, the Board found that the PWU was deficient in a number of ways: it did not represent any bargaining units composed exclusively of construction workers; its so-called construction practice was largely confined to a single employer - the public utility, Ontario Hydro; it was not a craft union or a local of a recognized building trades union; it did not bargain in conjunction with other construction unions or have bargaining relationships with a number of construction employers; it did not operate a hiring hall or have other common institutional features of a construction trade union; it had not applied or sought to make use of the construction provisions of the legislation; and most of its members were not construction workers. Against that background, the Board concluded that the fact that some PWU members regularly did construction work was not sufficient, by itself, to establish that the PWU was a trade union that “according to established trade union practice pertains to the construction industry”.

82. In other words, in assessing the nature of the PWU, the Board looked at trade union practices, *in general* - not just the practice of the PWU itself. The template for evaluation was the entrenched pattern of institutional and collective bargaining arrangements that had been established, or were customarily followed, by recognized construction unions. And from that perspective, the PWU was not (as counsel in this case put it) “part of the club”.

83. What, then, is the status of Local 1072?

84. Unlike the Power Workers’ Union, Local 1072 is the creature of a parent union that is undoubtedly “a trade union that according to established trade union practice pertains to the construction industry”. The parent union is “part of the club” and: Local 1072 is the “child” of that parent “construction union”; the members of Local 1072 are also members of that parent “construction union”; and the officers of Local 1072 exercise the powers and fulfil the responsibilities accorded to them under the constitution of the parent “construction union”.

85. In this respect, the situation is quite different from the PWU, and might suggest that a “local” of the parent construction union should necessarily be considered to be a “construction union” too - that is, that the local union takes its character from the parent.

86. However, regardless of the constitutional connection to the parent union, Local 1072 is also a separate “trade union” in its own right, whose status has to be determined by looking at the totality of *its own* characteristics. Moreover, the constitution of the parent union makes it quite clear that not all of its members or locals will necessarily pertain to the construction industry. On the contrary, the description of membership makes express mention of “public sector workers”, “health care workers” and “aerospace workers”, as well as a variety of employees who work in an industrial setting; and none

of these categories involve construction or building trades workers. Nor are "health care", "aerospace", or the "public sector" part of the construction industry.

87. Accordingly, the fact that individuals happen to be members of this particular parent union - which is undoubtedly a construction union - does not, in itself, make them construction workers. Nor is every local subdivision of that parent union necessarily an organization that "according to established trade union practice pertains to the construction industry". It depends upon who the local represents and how it conducts itself in relation to the construction industry (or otherwise). If anything, the terms of the parent union's constitution confirm that some members and some locals will *not* be part of the construction industry at all. And if that means that members of the same union will have different statutory rights, that is only because of the restrictive way in which Bill 80 is framed.

88. I do not think that every "local" of a parent construction union is automatically, and *ipso facto*, a union that "according to established trade union practice pertains to the construction industry". The connection to the parent union is not irrelevant, but what matters is the local union's own domestic practices, and how those practices compare to established trade union practice in the construction industry. And in this regard, Local 1072 is a lot like the PWU.

89. Local 1072, like local 2689 before it, is most accurately described as an "industrial" or "shop local" of the parent union - an organization which negotiates with industrial employers and represents manufacturing employees. No doubt, for a time, the grouping of members that now makes up Local 1072, was the "industrial section" of Local 27, and as such was part of a "construction union". But that grouping has now been returned to its former status as a separate "shop local", and has shed its temporary connection with the construction local.

90. For about three years, members who worked for fixtures manufacturers were members of a "construction union". But having merged Local 2689 with construction Local 27, the parent union then reversed the process, and recreated what went before - separating members who customarily work and bargain in the construction industry from members who do not. The separation from Local 27 broke the organic connection with a construction union that existed between 1989 and 1992, and distanced Local 1072 from construction industry bargaining and practices engaged in by Local 27. To put the matter colloquially (but not inaccurately) the amalgamated Local 27 was subdivided again into "construction" and "industrial" components - reflecting the different kinds of employers and employees involved, as well as the different kinds of collective bargaining in which Local 27 and Local 1072 would be engaged (with Local 27 dealing with construction employers and employees and participating in the ICI bargaining structure, while Local 1072 deals with industrial employers and takes no part in the construction or ICI bargaining).

91. The vast majority of Local 1072's members are not construction workers and do not work on a construction site. They work in plants, in an industrial setting, and their employers are manufacturers. In consequence, the collective agreements negotiated by Local 1072 resemble industrial, rather than construction industry, collective agreements - which is to say, the collective bargaining practice and its results do not follow the practices or results prevailing in the construction industry.

92. The bargaining units in Local 1072's agreements are not confined to either a craft grouping or to a grouping of building trades workers - which is the practice in the construction industry. The job classifications, wage rates and general terms of Local 1072's agreements are what one would find in an industrial setting, rather than the construction industry. And in Local 1072's agreements, one does not see common construction industry arrangements like the hiring hall - because, of course, industrial workers neither need nor resort to a hiring hall.

93. The members of Local 1072 do not go from job to job, and employer to employer, as construction workers usually do. The members of Local 1072 work for a single employer who operates a manufacturing facility in a fixed location.

94. Local 1072 has not sought to acquire bargaining rights pursuant to the construction industry provisions of the *Labour Relations Act*, nor has Local 1072 otherwise sought to apply those provisions to its operation (the provisions of section 133 for example). Local 1072 does not represent any bargaining unit composed exclusively of construction workers. On the contrary, many of Local 1072's bargaining units contain no construction workers (i.e. installers) at all; and those that do have workers who sometimes go on construction sites, have those workers mixed in for collective-bargaining purposes with other industrial employees who do not do any construction work. The installers are, at best, a small minority, and their work on construction sites is necessarily irregular.

95. When this minority of Local 1072 members is working on a construction site (doing what is said to be ICI construction work), the employees are not actually working pursuant to the terms of the local area *construction industry* collective agreement. Rather, they work pursuant to their own "shop agreement" which merely picks up or duplicates a few (but not all) of the terms of the ICI agreement.

96. Local 1072 does not participate in the bargaining for those local area construction agreements or for the ICI provincial agreement. For collective bargaining purposes, neither Local 1072 nor its predecessor Local 2689 have ever been part of the Ministerial ICI designation for carpenters (see sections 151-153 of the Act). Nor, so far as I am aware, has Local 1072 or its predecessor ever taken part in bargaining for the ICI construction agreement. The ICI designations have been amended from time to time to take into account changing union structures and construction practices, but there is no evidence that Local 1072 or its predecessors has ever sought to be added to the designation so that it could participate in the ICI bargaining (even though, it is said, Local 1072 members do construction work on ICI construction sites). Indeed, there is no evidence that Local 1072 engages in bargaining with *any* true construction employers, or that it bargains in *coalition* with *any* true construction trade unions - even its sister locals in the Carpenters' Union.

97. In other words Local 1072 is not commonly associated for collective bargaining purposes with traditional construction employers or with building trades unions.

98. It is true that some members of Local 1072 may sometimes perform construction work on a construction site; and when they do that, they may work in conjunction with construction workers, and may receive payments that are linked to those in the relevant construction industry collective agreement. It cannot be said that Local 1072 has nothing to do with the construction industry at all. However, on balance, I find that Local 1072 is not a union that "*according to established trade union practice* pertains to the construction industry". The non-construction practices and features of Local 1072 far outweigh its rather minimal and peripheral connections to the construction industry.

99. So to put the matter positively: I find, having regard to "established trade union practice", that Local 1072 - a so-called "shop local" - does not "pertain to the construction industry".

100. I find that Local 1072 is not a "construction union" within the meaning of section 126 of the Act.

## VI

101. The parties were agreed that, for the moment, the Board should determine only whether Carpenters' Local 1072 was a "construction trade union" within the meaning of section 126 of the Act,



to which the wide-ranging provisions of "Bill 80" (sections 145-150 of the Act) might conceivably apply. That was the focus of both the evidence and argument put before the Board because the parties wanted this issue decided first - before addressing any other preliminary issues, and before considering whether there actually was "just cause" for the parent union's actions. Counsel touched only very briefly upon the possible application of sections 5 and 76 of the Act - provisions that the applicants say might also provide an independent basis for their claim (or parts of it).

102. Now, as the respondents pointed out, it is a little difficult to see how the facts mentioned in the applicants' pleadings fit within the parameters of section 5 or section 76 of the Act, or to see what "rights under the Act" were purportedly being exercised and interfered with. Moreover, it is not obvious that the "freedoms" mentioned in section 5 provide any independent basis for complaint, separate and apart from the later substantive sections of the Act. The Board's cases in this area typically follow the general legislative thrust of "non-intervention" in internal union affairs. (See and compare, for example: *Frank Manoni #1* [1982], 1 Can. LRBR 347; *Frank Manoni #2* [1983], 4 Can. LRBR 404; *Keith MacLeod Sutherland*, [1983] OLRB Rep July 1219; and, see generally, G. W. Adams *Canadian Labour Law* 2nd. edition, chapter 10, parag. 10.1280 to 10.1350, and chapter 14, parag. 14.10 to 14.40.) Indeed, that is why Bill 80 was necessary: because the general unfair labour practice provisions do not normally cover the internal workings of the union, or the administration of trusteeships, or the way in which trade unions deal with their members and officers. So, it is not at all obvious that, apart from Bill 80, the applicants have any relief available under the Act (as opposed to under the union constitution itself, or at common law).

103. That said, given the way that the argument unfolded before the Board, I do not think that it is appropriate to make any final ruling about that; because, in my view, the parties did not fully and squarely canvas that issue. Their focus at the hearing was almost exclusively on "the Bill 80 question".

104. Accordingly, the applicant union is directed to advise the Board whether, in view of the above ruling, it intends to proceed with this complaint. If it does, the responding parties will have 30 days to make written argument on whether the facts as pleaded, make out a *prima facie* case for the relief requested.

105. Those representations should be reviewed by a "construction" Vice-Chair or panel; however, this particular panel is not seized.

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**0876-97-JD** Labourers' International Union of North America, Local 1036, Applicant  
v. **Walter & SCI Construction (Canada) Ltd.** and United Brotherhood of Carpenters  
and Joiners of America, Local 446, Responding Parties

**Construction Industry - Jurisdictional Dispute - Practice and Procedure - Timeliness - Carpenters' union asking Board to dismiss jurisdictional dispute complaint brought by Labourers' union on account of delay - Board not accepting applicant's desire to compile best case or lack of counsel resources to assist in that respect as sufficient reasons for 7 month delay - Application dismissed**

**BEFORE:** Robert Herman, Alternate Chair, and Board Members W. N. Fraser and G. McMenemy.

**DECISION OF THE BOARD;** October 15, 1997

1. This is a jurisdictional dispute filed pursuant to the provisions of section 99 of the *Labour Relations Act, 1995*.

2. In response to a submission from Carpenters, Local 446, that the application ought not to be heard because of undue delay in bringing the application, the first issue dealt with by the Board at the consultation was the issue of delay.

3. Labourers, Local 1036 took the position that there had been no delay, or at least that the time taken had not been unreasonable in all the circumstances. In the alternative, if there had been an unreasonable delay, it submitted that the delay was not caused by any failure on behalf of Labourers, Local 1036, but was attributable solely to the inability of its counsel to devote the necessary time and resources to the matter. Accordingly, on this alternative submission, Labourers, Local 1036 argued that any delay occasioned by its counsel ought not to be held against it.

4. At the consultation, the Board provided the following decision orally:

- (1) The question before the Board is whether to dismiss this application on the grounds of delay. Here, the delay was of approximately 7 months, from September, 1996 to April, 1997.
- (2) Generally, the explanation for this delay was the desire of the applicant Labourers to compile or file its best case, in light of the importance of the issue to it, and the lack of counsel resources to assist it in that respect.
- (3) Either of these reasons might explain some short delay in filing a jurisdictional dispute, but not the longer delay present here. There is no suggestion that the other parties were approached to be asked for extra time for the filing of the application. The reasons given to justify the delay are not sufficient in our view to justify such a long period of delay.
- (4) If a party in a jurisdictional dispute context has insufficient legal resources to assist it, then that party must bear the risk itself.
- (5) We cannot accept as sufficient reason for the delay either of the reasons proffered by the applicant, its desire to file the best case it could, or its lack of counsel resources.
- (6) Counsel for the applicant argues that there has been no prejudice to Carpenters, Local 446 in this delay, and that in any event, it is for Local 446 to establish that there would be some prejudice if this case should proceed.
- (7) Jurisdictional disputes are a process designed to move relatively quickly at the Board, at least with respect to the stage of the initial filing of the dispute. The system of dealing with such disputes at the Board is itself undermined if jurisdictional disputes could be filed after long delays, without reasonable explanation, and if they should be allowed to proceed. Unions would then file jurisdictional disputes with respect to disputes long over.
- (8) It is not only the question of whether there has been actual prejudice to the Carpenters, although the passage of time itself does in our view carry with it prejudice, as other contractors in the area will continue to make work assignments in the intervening period, and the uncertainty over the appropriateness of those assignments will continue.
- (9) But apart from the actual prejudice here, it is a question of promoting the right system for dealing with jurisdictional disputes at the Board. Countenancing a 7 month delay, without good explanation, in our view undercuts this system.
- (10) Finally, if the Board had been satisfied that deciding this jurisdictional dispute on the merits would resolve the disputed type of work assignments in the Sault Ste. Marie area, notwithstanding the unexplained long delay, the Board might well have allowed the

application to proceed. However, that is not so in our view. At best, should the Labourers be successful on the merits of the instant application, the parties would simply have another decision of the Board, one contrary to the previous decision of the Board in *Nicholls-Radtke Limited* [1993] OLRB Rep. Dec. 1343. This area of dispute would likely remain one of contest and conflict between these two unions, with no particular resolution of the uncertainty for employers or the unions.

- (11) On the grounds of delay, the Board declines to inquire further, and this application is dismissed.

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## COURT PROCEEDINGS

**0387-96-R; 0453-96-U (Court File No. M21018) Wal-Mart Canada Inc., Applicant v. United Steelworkers of America and the Ontario Labour Relations Board, Respondents**

**Certification - Certification Where Act Contravened - Charter of Rights - Constitutional Law - Judicial Review - Representation Vote - Board concluding that conduct of employer in circulating amongst employees and engaging them in individual and group discussions regarding the union violating section 70 of the Act - Employer's refusal to answer questions regarding closing of store if union certified amounting to intentionally generated implied threat to employees' job security and also violating the Act - Board concluding that results of representation vote not disclosing employees' true wishes, that no remedy short of automatic certification sufficient to counter effect of employer contraventions, and that union holding membership support sufficient for collective bargaining - Union certified under section 11 of the Act - Applications for judicial review brought by employer and by objecting employees dismissed by Divisional Court - Application for leave to appeal dismissed by Court of Appeal**

Board decision reported at [1997] OLRB Rep. Jan./Feb. 141. Divisional Court decision reported at [1997] OLRB Rep. July/Aug. 810.

*Court of Appeal for Ontario, McMurtry CJO, Finlayson and Doherty JJA., October 3, 1997.*

**The Court (endorsement):** The application for leave to appeal is dismissed with costs.















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## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING AUGUST 1997

### APPLICATIONS FOR CERTIFICATION

#### Bargaining Agents Certified Without Vote

**2259-95-R:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. Diplock Floor Ltd. (Respondent)

Unit: "all rodmen and rodmen apprentices in the employ of Diplock Floor Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all rodmen and rodmen apprentices in the employ of Diplock Floor Ltd. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (0 employees in unit)

#### Bargaining Agents Certified under Section 11 of the Act

**4040-95-R:** IWA-Canada (Applicant) v. ZCL Fiberglass Ltd. (Respondent)

Unit: "all employees of ZCL Fiberglass Ltd. in Belleville, Ontario, save and except co-ordinators and persons above the rank of co-ordinator, office and sales staff and engineers" (27 employees in unit)

#### Bargaining Agents Certified Subsequent to Vote

**4072-95-R:** United Steelworkers of America (Applicant) v. Burns International Security Services Limited (Respondent) v. United Food and Commercial Workers International Union, Local 333 (Canadian Security Union) and International Union, United Plant Guard Workers of America Local 1956 (Interveners)

Unit: "all security guards in the employ of Burns International Security Services Limited in the County of Sussex, County of Kent, County of Middlesex, County of Oxford, County of Perth, County of Essex, County of Huron, County of Lambton, save and except Guard Inspectors or their designates, persons above the rank of Guard Inspector or their designate, office, clerical and sales staff and students employed during the school vacation periods. County of Wellington, County of Brant, Regional Municipality of Waterloo, Regional Municipality of Hamilton-Wentworth, Town of Milton, Town of Haldimand, City of Burlington, City of Niagara Falls, City of St. Catharines, Town of West Lincoln, Town of Grimsby, City of Welland, Town of Fort Erie, Town of Dunville, City of Clarkson (Petro Canada), save and except Site Supervisors or their designates, Guard Inspectors or their designates, persons above the rank of Site Supervisor or their designate, Guard Inspector or their designate, office, clerical and sales staff and students employed during the school vacation periods" (799 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	1299
Number of persons who cast ballots	512
Number of segregated ballots cast by persons whose names appear on voter's list	512
Number of ballots marked in favour of applicant	85
Number of ballots marked in favour of intervener	329
Number of ballots marked in favour of second intervener	7
Number of ballots segregated and not counted	22

**1830-96-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. JAK Electrical Contractors Limited (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of JAK Electrical Contractors Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (20 employees in unit)

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	10
Number of ballots segregated and not counted	2

**2953-96-R:** United Steelworkers of America (Applicant) v. Burns International Security Services Limited (Respondent) v. International Union, United Plant Guard Workers of America, Local 1962 (Intervener)

Unit: "all security guards in the employ of Burns in the Province of Ontario, save and except for persons covered by prior certificates issued by the Ontario Labour Relations Board to the Union, prior to the date hereof, Site Supervisors, Guard Inspectors and persons above those ranks, office, clerical, sales staff, students employed during the school summer vacation period" (950 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	933
Number of persons who cast ballots	244
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	175
Number of ballots marked in favour of intervener	54
Number of ballots segregated and not counted	15

**4315-96-R:** Office and Professional Employees International Union (Applicant) v. The Board of Education for the City of Scarborough (Respondent)

Unit: "all office, clerical, technical and professional employees, of The Board of Education for the City of Scarborough in the City of Scarborough, Ontario, save and except supervisors, persons above the rank of supervisor, students and persons for whom any Trade Union held bargaining rights as of March 24, 1997" (1300 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	1785
Number of persons who cast ballots	1035
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	514
Number of segregated ballots cast by persons whose names appear on voter's list	469
Number of segregated ballots cast by persons whose names do not appear on voters' list	52
Number of spoiled ballots	12
Number of ballots marked in favour of applicant	827
Number of ballots marked against applicant	61
Number of ballots segregated and not counted	135

**1018-97-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Accurcast Division of Meridian Operations Inc. (Respondent)

Unit: "all employees of Accurcast Division of Meridian Operations Inc. in the Town of Wallaceburg, save and except supervisors, persons above the rank of supervisor, office, sales and technical staff (including Quality



Assurance Services Technicians), and students employed during the school vacation period” (286 employees in unit)

Number of names of persons on revised voters' list	280
Number of persons who cast ballots	253
Number of ballots marked in favour of applicant	164
Number of ballots marked against applicant	89

**1142-97-R:** United Steelworkers of America (Applicant) v. Al Petty Machine Shop Ltd. (Respondent)

Unit: “all employees of Al Petty Machine Shop Ltd. in the city of Sault Ste. Marie, save and except Office Manager and persons above the rank of Office Manager” (23 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	1

**1215-97-R:** International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Pine Valley Electric Company Ltd. (Respondent)

Unit: “all electricians and electricians' apprentices in the employ of Pine Valley Electric Company Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in the employ of Pine Valley Electric Company Ltd. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman” (2 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	2

**1253-97-R:** Graphic Communications International Union, Local 500M (Applicant) v. Griffin House Graphics Limited, King Lithoplate Limited (Respondents)

Unit #1: “all employees of Griffin House Graphics Limited in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office and sales staff, students employed during the school vacation period and persons working under the terms of the existing collective agreement with the applicant” (19 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	18
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	6

Unit #2: "all employees of King Lithoplate Limited in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office and sales staff, and students employed during the school vacation period" (19 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	18
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	6

**1257-97-R:** United Steelworkers of America (Applicant) v. New City Resources Inc. (Respondent)

Unit: "all employees of New City Resources Inc. in the Municipality of Clarington, save and except Business Manager and persons above the rank of Business Manager, office, clerical and sales staff" (13 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	4

**1258-97-R:** Ontario Nurses' Association (Applicant) v. Community Care Access Centre of Wellington- Dufferin (Respondent)

Unit: "all office and clerical employees employed by the Placement Coordination Services of the Wellington-Dufferin Community Care Access Centre, save and except the Coordinators, Managers and persons employed above the rank of Manager" (3 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0

**1290-97-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Recoton Canada Ltd. (Respondent)

Unit: "all warehouse employees of Recoton Canada Ltd. in the Town of Pickering, Ontario, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff, and students employed during the school vacation period" (28 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	28
Number of persons who cast ballots	32
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	27
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of ballots marked in favour of applicant	27
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	5

**1297-97-R:** Ontario Nurses Association (Applicant) v. St. Joseph Nursing Home (Respondent)

Unit: "all registered and graduate nurses employed in a nursing capacity by St. Joseph's Nursing Home in Rockland, save and except the Director of Care and persons above the rank of Director of Care" (6 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	1

**1303-97-R:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Runge Publishing Inc. (Respondent)

Unit: "all production employees of Runge Publishing Inc. at its D.F.R. Printing division in the City of Pembroke, save and except managers, persons above the rank of manager, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (21 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	18
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	8

**1359-97-R:** Service Employees' Union, Local 210 (Applicant) v. Heritage Children's Centre of Kent County (Respondent)

Unit: "all employees of the Heritage Children's Centre in the County of Kent, save and except Co-Ordinators and persons above the rank of Co-Ordinator, and the Executive Assistant" (45 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	47
Number of persons who cast ballots	36
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	31
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	31
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	5

**1360-97-R:** Teamsters Local Union 938 (Applicant) v. Travelway Inn (Sudbury) Ltd. (Respondent)

Unit: "all employees of Travelway Inn (Sudbury) Ltd. in the City of Sudbury, save and except head housekeeper, persons above the rank of head housekeeper and restaurant employees" (18 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	2

**1373-97-R:** Ontario Public Service Employees Union (Applicant) v. The Dufferin County Board of Education (Respondent)



Unit: "all temporary employees of The Dufferin County Board of Education, in Dufferin County who are employed as secretaries, clerks, receptionists, typists, stenographers, or any other persons employed in a secretarial or clerical capacity, save and except secretary to the Director, secretaries to Superintendents, secondary school head secretaries and persons above those ranks, and students employed in an educational co-operative program and persons for whom a trade union held bargaining rights as of July 21, 1997" (22 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	1

**1416-97-R:** United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. The Board of Education for the City of Windsor (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of The Board of Education for the City of Windsor in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of The Board of Education for the City of Windsor in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (9 employees in unit)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	7
Number of ballots marked in favour of applicant	7
Number of ballots segregated and not counted	0

**1427-97-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Unicco Facility Services Canada Company (Respondent)

Unit: "all employees of Unicco Facility Services Canada Company at 180 Wellington Street West, in the Municipality of Metropolitan Toronto, save and except supervisors and persons above the rank of supervisor" (11 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	0

**1435-97-R:** International Association of Machinists and Aerospace Workers, Thunder Bay Lodge 1120 (Applicant) v. Gore Motors Limited (Respondent)

Unit: "all employees of Gore Motors Limited in the City of Thunder Bay, save and except foreman, persons above the rank of foreman, office staff and students employed during the school vacation period" (4 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	1

**1436-97-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 536132 Ontario Limited o/a Atlas Aluminum (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of 536132 Ontario Limited o/a Atlas Aluminum in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of 536132 Ontario Limited o/a Atlas Aluminum in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	1

**1445-97-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Dufferin Construction Company (Respondent)

Unit: "all construction workers in the employ of Dufferin Construction Company in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and industrial sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	1

**1448-97-R:** United Steelworkers of America (Applicant) v. Equine Forgings Limited (Respondent)

Unit: "all employees of Equine Forgings Limited in the Town of Fort Erie, save and except Plant Supervisor and persons above the rank of Plant Supervisor, office, clerical and sales staff" (15 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	0

**1449-97-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Alfama Electrical Contractors Inc. and Tagus Electrical Contractors Inc. (Respondents)

Unit: "all journeymen electricians and electricians' apprentices in the employ of Alfama Electrical Contractors Inc. and Tagus Electrical Contractors Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen electricians and electricians' apprentices in the employ of Alfama Electrical Contractors Inc. and Tagus Electrical Contractors Inc. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	5

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	3
Number of ballots segregated and not counted	1

**1452-97-R:** United Brotherhood of Carpenters and Joiners of America, Local Union 1072 (Applicant) v. Mr. Pallet Inc. (Respondent)

Unit: "all employees of Mr. Pallet Inc. working in the shop and yard including truck drivers in the Municipality of Metropolitan Toronto, Region of York, Region of Durham, Region of Dufferin and Region of Peel, save and except foreman and persons above the rank of foreman" (5 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	4
Number of ballots segregated and not counted	3

**1468-97-R:** Ontario Public Service Employees Union (Applicant) v. Halton Hills Ambulance Services (Respondent)

Unit: "all employees of Halton Hills Ambulance Services in the Municipality of Halton Hills, save and except volunteers, the Secretary-Treasurer, the Vice-President and persons above the rank of Vice-President" (13 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	0

**1530-97-R:** International Association of Machinists and Aerospace Workers (Applicant) v. H & H Manufacturing Ltd. (Respondent)

Unit: "all employees of H & H Manufacturing Ltd. in the City of Burlington, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (29 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	31
Number of persons who cast ballots	30
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	27
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	20
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	3

**1534-97-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. The Board of Governors of Exhibition Place (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of The Board of Governors of Exhibition Place in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in the employ of The Board of Governors of Exhibition Place in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of



Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	0

**1575-97-R:** United Steelworkers of America (Applicant) v. Accura Molding Company Ltd. (Respondent)

Unit: "all employees of Accura Molding Company Ltd. in the City of Mississauga, save and except forepersons, persons above the rank of foreperson, office, clerical and sales staff" (116 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	116
Number of persons who cast ballots	110
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	105
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	86
Number of ballots marked against applicant	19
Number of ballots segregated and not counted	5

**1607-97-R:** International Association of Machinists and Aerospace Workers (Applicant) v. Gunn Metal Stampings Inc. (Respondent)

Unit: "all employees of Gunn Metal Stampings Inc. in the City of Guelph, save and except supervisors, persons above the rank of supervisor, office and sales staff" (22 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	4

**1613-97-R:** International Brotherhood of Electrical Workers, Local Union 1687 (Applicant) v. A-1 Electrical-Construction-Maintenance Ltd. (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of A-1 Electrical-Construction-Maintenance Ltd., in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in the employ of A-1 Electrical-Construction-Maintenance Ltd., in all sectors of the construction industry within a radius of 81 kilometers (approximately 50 miles) of the Timmins Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3

Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	1

**1616-97-R:** United Food and Commercial Workers International Union, Local 1000A (AFL-CIO-CLC) (Applicant) v. 1138806 Ontario Limited (Respondent)

Unit: "all employees of 1138806 Ontario Limited carrying on business as Kewadin Inn in the City of Orillia, save and except department heads, and persons above the rank of department head" (64 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	66
Number of persons who cast ballots	41
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	35
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of ballots marked in favour of applicant	27
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	6

**1617-97-R:** United Steelworkers of America (Applicant) v. Philip Services Corp. (Respondent)

Unit: "all employees of Philip Services Corp. in the City of Whitby, save and except Supervisors, persons above the rank of Supervisor and secretary" (14 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	1

### Applications for Certification Dismissed Subsequent to Vote

**0931-97-R:** Canadian Union of Public Employees (Applicant) v. The Board of Education for the City of Etobicoke (Respondent)

Unit: "all continuing education and LINC instructors employed as Adult English as a Second Language (ESL) Instructors and/or LINC Child minders by the Board of Education for the City of Etobicoke in the city of Etobicoke, save and except supervisors and co-ordinators, persons above the rank of supervisor and co-ordinator and any person for whom a trade union held bargaining rights on June 16, 1997" (137 employees in unit)

Number of names of persons on revised voters' list	162
Number of persons who cast ballots	124
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	104
Number of segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	56
Number of ballots marked against applicant	47
Number of ballots segregated and not counted	2

**1231-97-R:** Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 141 (Applicant) v. Lafarge Canada Inc. (Respondent)

Unit: "all employees of Lafarge Canada Inc. employed in the Town of Parkhill, save and except foremen, persons above the rank of foreman, office and sales employees" (4 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	2

**1275-97-R:** International Union of Operating Engineers, Local 793 (Applicant) v. CleanSoils Limited (Respondent)

Unit: "all employees of Cleansoils Limited in the City of Hamilton, save and except supervisors, those above the rank of supervisor, office and sales staff" (7 employees in unit)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	6

**1305-97-R:** United Steelworkers of America (Applicant) v. North American Security Services Inc. (Respondent) v. Canadian Union of Professional Security-Guards (Intervener)

Unit: "all employees of North American Security Services Inc. in the Province of Ontario, save and except Managers, Supervisors, Mobile Patrol Officers, Control Centre Operators, Sales/Service/Consultant Personnel, Head Office Support Staff (i.e. secretarial, clerical, etc.), Technicians and Investigators" (253 employees in unit)

Number of names of persons on revised voters' list	247
Number of persons who cast ballots	133
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	109
Number of segregated ballots cast by persons whose names appear on voter's list	21
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	46
Number of ballots marked in favour of intervener	78
Number of ballots segregated and not counted	7

**1340-97-R:** IBEW Construction Council of Ontario (Applicant) v. Darrel Stewart c.o.b. as Richlynn Electric (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of Darrel Stewart c.o.b. as Richlynn Electric in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all electricians and electricians' apprentices in the employ of Darrel Stewart c.o.b. as Richlynn Electric in all other sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	2



**1357-97-R:** United Food and Commercial Workers International Union (Applicant) v. 573636 Ontario Inc., c.o.b. as North 82 Steak and Beverage Co. (Respondent)

Unit: "all employees of Steak and Beverage, North 82 in the City of Sault Ste. Marie, save and except Managers and persons above the rank of Manager" (40 employees in unit)

Number of names of persons on revised voters' list	45
Number of persons who cast ballots	37
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	37
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	21
Number of ballots segregated and not counted	0

**1396-97-R:** Industrial, Wood and Allied Workers of Canada (I.W.A. - Canada) (Applicant) v. 413535 Ontario Limited operating as North Toronto Cartage and N.T.C. Warehousing Ltd. (Respondents)

Unit: "all employees of North Toronto Cartage and North Toronto Warehousing Ltd. in Mississauga, Ontario, save and except supervisors, persons above the rank of supervisor, payroll clerk, sales staff, employees who work less than 24 hours per week and students working during the summer" (9 employees in unit)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	5

**1404-97-R:** United Food and Commercial Workers International Union, AFL-CIO, CLC (Applicant) v. Anna McIntosh Holdings c.o.b. as Tim Hortons (Respondent)

Unit: "all employees of Tim Hortons Ltd. in Kingsville, Ontario, save and except Supervisors and those above the rank of Supervisor" (25 employees in unit)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	21

**1426-97-R:** Teamsters Local Union 91 (Applicant) v. Aye Company Limited (Respondent)

Unit: "all employees of Aye Co. operating under the roof sign "Central Taxi" in the City of Belleville, save and except supervisors, persons above the rank of supervisor, inspectors, call takers, dispatchers, maintenance staff, office and clerical staff, and multi-plate and/or multi-car owners and/or lessees" (22 employees in unit)

Number of names of persons on revised voters' list	36
Number of persons who cast ballots	29
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	20

Number of ballots segregated and not counted	4
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**1450-97-R:** United Steelworkers of America (Applicant) v. Toys 'R' Us (Canada) Ltd. (Respondent)

Unit: "all employees of the Toys 'R' Us (Canada) Ltd., in the City of Brampton, save and except Manager, persons above the rank of Manager, also Management Trainees." (43 employees in unit)

Number of names of persons on revised voters' list	43
Number of persons who cast ballots	40
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	35
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	26
Number of ballots segregated and not counted	5

**1544-97-R:** International Association of Machinists and Aerospace Workers (Applicant) v. O.D. International Inc., c.o.b. as Office Place (Respondent)

Unit: "all employees of O.D. International Inc., c.o.b. as Office Place, in the City of Etobicoke, save and except managers, and persons above the rank of manager" (20 employees in unit)

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	2

### Applications for Certification Withdrawn

**1295-96-R:** The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local 819 (Applicant) v. City & District Steeplejacks Limited (Respondent) v. International Association of Machinists & Aerospace Workers Local Lodge 412 (Intervener)

**1734-97-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. The Atlas Corporation operating as Atlas Dewatering Systems (Respondent)

### APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

**3488-94-R:** The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Downsview Plumbing & Heating Company Limited and Norfinch Plumbing & Heating Limited and Markel Plumbing Limited (Respondents) (Withdrawn)

**3506-95-R:** Ontario Pipe Trades Council and Local Union 46, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Alduco Mechanical Contractors Limited, Appleton Air-Conditioning Limited and Westor Plumbing and Heating Limited (Respondents) v. Bill Shank, Harvey Bates and Guy Pelletier (Intervenors) (Endorsed Settlement)

**0931-96-R:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Labourers' International Union of North America, Local 506 (Applicant) v. Pigott Construction Company Limited,

Kenaidan Contracting Ltd., Kenaidan Group Ltd., Kenaidan Developments Ltd., Kenaidan Realty Ltd., Kenaidan Landford Developments Ltd., Kenaidan Design-Build Ltd., 618584 Ontario Ltd. (Respondents) (Withdrawn)

**1306-96-R; 1336-96-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 819 (Applicant) v. Cornwall and District Contracting Limited and City & District Steeplejacks Limited (Respondents) v. The International Association of Machinists & Aerospace Workers, Local Lodge 412, United Brotherhood of Carpenters and Joiners of America, Local 93 (Intervenors); Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local 819 (Applicant) v. City & District Steeplejacks Limited and Cornwall and District Contracting Ltd. (Respondents) v. The International Association of Machinists & Aerospace Workers, Local Lodge 412, United Brotherhood of Carpenters And Joiners Of America, Local 93 (Intervenors) (Withdrawn)

**2203-96-R:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Empire Lathing and Insulating Company Limited and Empire Drywall Inc. and Old Mark Construction Ltd. (Respondents) (Withdrawn)

**0661-97-R:** International Brotherhood of Painters and Allied Trades Sign and Pictorial Painters, Local Union 1630 (Applicant) v. The Markle Brothers Ltd. and/or The Markle Brothers (Respondents) (Granted)

**1075-97-R:** International Brotherhood of Electrical Workers Local Union 1739 (Applicant) v. Ed Walker's Electric Limited and Kenneth Walker, Howard Walker, Gordon Walker, Glen Walker and David George Walker c.o.b. as Midland Mechanical (Respondents) (Endorsed Settlement)

**1180-97-R:** United Food and Commercial Workers' International Union, Local 175 & 633 (Applicant) v. Boshnick Investments Limited c.o.b. as Ridley Square I.G.A. and 758744 Ontario Limited c.o.b. as Ridley Square I.G.A. (Respondents) (Withdrawn)

**1252-97-R:** Graphic Communications International Union, Local 500M (Applicant) v. Griffin House Graphics Limited, King Lithoplate Limited (Respondents) (Withdrawn)

**1431-97-R:** The United Food and Commercial Workers' International Union, Local 175 & 633 (Applicant) v. Lucky Four Supermarkets (Dunnville) and Knechtel Dymont Food Market (Respondents) (Dismissed)

## SALE OF A BUSINESS

**3488-94-R:** The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Downsview Plumbing & Heating Company Limited and Norfinch Plumbing & Heating Limited and Markel Plumbing Limited (Respondents) (Withdrawn)

**1810-95-R:** United Food & Commercial Workers International Union, Local 175 (Applicant) v. Steenway Farms Ltd. (Respondent) (Dismissed)

**3506-95-R:** Ontario Pipe Trades Council and Local Union 46, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Alduco Mechanical Contractors Limited, Appleton Air-Conditioning Limited and Westor Plumbing and Heating Limited (Respondents) v. Bill Shank, Harvey Bates and Guy Pelletier (Intervenors) (Endorsed Settlement)

**0931-96-R:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Labourers' International Union of North America, Local 506 (Applicant) v. Pigott Construction Company Limited, Kenaidan Contracting Ltd., Kenaidan Group Ltd., Kenaidan Developments Ltd., Kenaidan Realty Ltd., Kenaidan Landford Developments Ltd., Kenaidan Design-Build Ltd., 618584 Ontario Ltd. (Respondents) (Withdrawn)

**1306-96-R; 1336-96-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 819 (Applicant) v. Cornwall and District Contracting



Limited and City & District Steeplejacks Limited (Respondents) v. The International Association of Machinists & Aerospace Workers, Local Lodge 412, United Brotherhood of Carpenters and Joiners of America, Local 93 (Intervenors); Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its LOCAL 819 (Applicant) v. City & District Steeplejacks Limited and Cornwall and District Contracting Ltd. (Respondents) v. The International Association of Machinists & Aerospace Workers, Local LODGE 412, United Brotherhood of Carpenters and Joiners of America, Local 93 (Intervenors) (Withdrawn)

**2203-96-R:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Empire Lathing and Insulating Company Limited and Empire Drywall Inc. and Old Mark Construction Ltd. (Respondents) (Withdrawn)

**0278-97-R:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Marli Mechanical Limited and Plumatic Inc. (Respondents) (Withdrawn)

**0646-97-R:** United Steelworkers of America and United Steelworkers of America Local 906 (Applicant) v. Mark IV Industries Canada Inc. (Respondent) v. National Automobile Aerospace, Transportation and General Workers Union (CAW-Canada) and its Local 252 (Intervener) (Granted)

**0661-97-R:** International Brotherhood of Painters and Allied Trades Sign and Pictorial Painters, Local Union 1630 (Applicant) v. The Markle Brothers Ltd. and/or The Markle Brothers (Respondents) (Granted)

**1075-97-R:** International Brotherhood of Electrical Workers Local Union 1739 (Applicant) v. Ed Walker's Electric Limited and Kenneth Walker, Howard Walker, Gordon Walker, Glen Walker and David George Walker c.o.b. as Midland Mechanical (Respondents) (Endorsed Settlement)

**1180-97-R:** United Food and Commercial Workers' International Union, Local 175 & 633 (Applicant) v. Boshnick Investments Limited c.o.b. as Ridley Square I.G.A. and 758744 Ontario Limited c.o.b. as Ridley Square I.G.A. (Respondents) (Withdrawn)

**1309-97-R:** Ontario Nurses' Association (Applicant) v. Green Gables Manor Inc. (Respondent) (Withdrawn)

**1431-97-R:** The United Food and Commercial Workers' International Union, Local 175 & 633 (Applicant) v. Lucky Four Supermarkets (Dunnville) and Knechtel Dymont Food Market (Respondents) (Dismissed)

**1827-97-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Tactix Construction Limited, Mexam Corp. (Respondents) (Withdrawn)

## UNION SUCCESSOR RIGHTS (SUCCESSOR STATUS)

**1188-97-R:** I.W.A. - Canada, Local 700 (Applicant) v. Wilson's Truck Lines Limited (Respondent) (Granted)

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**3690-95-R:** Deanna Payne, Diana Millar, Bob Knox, Linda Clark, Cathy McCallum, Doris Morrison, Wendy Stein, Lee Moncur, Kay Page, Blake Payne, Fred Wallis, Donna Balkwill, Audrey Plue, Chris Smith, Bessie McLaughlin, Lori Chatten, Cheryl Folz (Applicant) v. United Steelworkers of America (Respondent) v. Birchmere Retirement Residence (Intervener) (Dismissed)

**3884-95-R:** The Municipality of Metropolitan Toronto (Applicant) v. Canadian Union of Public Employees, Local 79 (Respondent) (Granted)

**3907-95-R; 3908-95-R:** Burns International Security Services Limited (Applicant) v. United Steelworkers of America (Respondent) v. International Union, United Plant Guard Workers of America, Local 1962 (Intervener) (Withdrawn)

**1994-96-R:** Lynda Ann Falvo (Applicant) v. United Food & Commercial Workers International Union, Local 175/633 (Respondent) v. Birssa Holdings Inc. c.o.b. East Side Mario's (Intervener) (Dismissed)

**2842-96-R:** Unionized Employees of Tenaquip (Applicant) v. Teamsters Local Union 419 (Respondent) v. Tenaquip Limited (Intervener) (Dismissed)

**1151-97-R:** Justin Mondor (Applicant) v. United Food and Commercial Workers International Union (Respondent) v. Robert M. Heenan Sales Ltd. (Intervener)

Unit: "all employees of Robert M. Heenan Sales Ltd. in the Town of Fort Francis, save and except head cashier and persons above the rank of head cashier, office and clerical staff" (39 employees in unit) (Granted)

Number of names of persons on revised voters' list	39
Number of persons who cast ballots	35
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	31
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of respondent	7
Number of ballots marked against respondent	28

**1244-97-R:** B. Lynch and the employees of Business Depot Ltd. (Applicant) v. United Food & Commercial Workers International Union and its Locals 175 and 633 (Respondent) v. Business Depot Ltd. (Intervener)

Unit: "all associates of Business Depot Ltd. located at 1936 McCowan Road, Scarborough, Ontario, save and except Assistant Managers and persons above the rank of Assistant Manager" (42 employees in unit) (Granted)

Number of names of persons on revised voters' list	42
Number of persons who cast ballots	32
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	32
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	31

**1554-97-R:** Tim F. Gallagher (Applicant) v. Sheet Metal Workers' International Association, Local Union 537 (Respondent) v. Bocek Fabricating Limited (Intervener)

Unit: "all employees of Bocek Fabricating Limited at Hamilton save and except non-working foremen, persons above the rank of non-working foreman, office and sales staff" (11 employees in unit) (Granted)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	9

**1619-97-R:** Shafeek Auadin, Gregory Small and Ines Pijal (Applicants) v. CAW, Local 124 (Respondent) (Dismissed)

**1628-97-R:** Joel Genoe, Pertab Singh, Mauricio Kramm (Applicants) v. United Steelworkers of America, Local 5296 (Respondent) v. Intercon Security Limited (Intervener) (Dismissed)

**1785-97-R:** Pierrette O'Link (Applicant) v. Sudbury Mine, Mill and Smelter Workers Union Local 598 of the Canadian Auto Workers (Respondent) v. Housing Resource Centre (Sudbury)/Centre De Ressources De Logement (Sudbury) (Intervener) (Granted)

**1812-97-R:** Steven Lines (Applicant) v. United Plant Guard Workers of America (Respondent) v. St. Joseph's Health Centre (Intervener) (Dismissed)

## **APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE (CONSTRUCTION INDUSTRY)**

**3917-96-U:** Marine Pipeline Construction of Canada (1993), A Division of Murphy Pipeline Inc. (Applicant) v. Pat Pernitsky and Richard Ehry (Respondents) v. United Association of Journeymen and Apprentices of the Plumbing and Pipe fitting Industry of the United States and Canada, Local 663 (Intervener) (Withdrawn)

## **COMPLAINTS OF UNFAIR LABOUR PRACTICE**

**4041-95-U:** IWA-Canada (Applicant) v. ZCL Fiberglass Ltd. (Respondent) (Granted)

**1337-96-U:** The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local 819 (Applicant) v. City & District Steeplejacks Limited and International Association of Machinists and Aerospace Workers, Lodge 412 (Respondents) (Withdrawn)

**1796-96-U:** Christian Labour Association of Canada (Applicant) v. Univision Marketing Group Inc. (Respondent) (Withdrawn)

**1819-96-U:** Service Employees International Union, Local 204, Service Employees International Union, Local 532 (Applicant) v. The Royalcrest Lifecare Group Inc., Aldo Martino and John Martino (Respondent) (Granted)

**2042-96-U:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. JAK Electrical Contractors Limited (Respondent) (Granted)

**2108-96-U:** Alan E. Mara (Applicant) v. Polysar Rubber Corporations, Local 914 (C.E.P.W.) Union (Respondents) (Terminated)

**2779-96-U:** Retail Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America and Local 1688, The Ontario Taxi Union (Applicant) v. Saleem Irshad, Fardin Ayatti Ghaffari, Kami Salehi, Jim Bell and Diamond Taxicab Association (Toronto) Limited (Respondents) v. Diamond Taxicab Associates' Committee (Intervener) (Endorsed Settlement)

**3265-96-U:** United Steelworkers of America (Applicant) v. Burns International Security Services Limited (Respondent) (Dismissed)

**3359-96-U:** Arthur Forsyth (Applicant) v. United Plant Guard Workers of America (UPGWA) - Local 1962 (Respondent) (Withdrawn)

**3482-96-U:** Teresita Lanuza (Applicant) v. Ontario Nurses' Association (Respondent) v. The Toronto Hospital (Intervener) (Dismissed)

**3680-96-U:** The Estate of the Late Edward Gris c/o Mrs. Donna Gris, Executrix and Surviving Spouse (Applicant) v. United Steelworkers of America, Local 1005 (Respondent) v. Stelco Inc. (Intervener) (Dismissed)

**3789-96-U:** Loretta St. Louis (Applicant) v. Local 200 (Respondent) v. Ford Motor Company of Canada Limited (Intervener) (Withdrawn)



**3836-96-U:** Carl David Jason (Applicant) v. Canadian Union of Public Employees, Local 5, C.L.C (Respondent) v. The Corporation of the City of Hamilton (Intervener) (Withdrawn)

**3844-96-U; 4348-96-U:** International Brotherhood of Electrical Workers, Local Union 402 (Applicant) v. Pyramid Electric Corporation (Respondent); Pyramid Electric Corporation (Applicant) v. International Brotherhood of Electrical Workers Local Union 402 (Respondent) (Withdrawn)

**3975-96-U:** Marc Paul Teahen (Applicant) v. Canadian Union of Public Employees (Local 1369) (Respondent) (Withdrawn)

**4089-96-U:** Frank Leonardo, Robert Valere, Donald Pallas, Peter Galeota, et al. (Applicant) v. Teamsters Local Union # 938 and Orion Bus Industries Ltd. (Respondents) (Dismissed)

**4132-96-U; 0279-97-U:** Roger E. Mace (Applicant) v. David Beatty and Canarm Co. Ltd. (Respondent); United Steelworkers of America (Applicant) v. Canarm Ltd. (Respondent) (Withdrawn)

**4161-96-U:** Stephan Robichaud-Tobin (Applicant) v. United Food & Commercial Workers, Local 206, Canadian Union of Professional Security-Guards (Respondents) v. Ontario Guard Services Inc. (Intervener) (Dismissed)

**4174-96-U:** Shanti Durga (Applicant) v. Office and Professional Employees International Union, Local 343 (Respondent) v. Labourers' International Union of North America, Local 183 (Intervener) (Withdrawn)

**4273-96-U:** Fernando Duarte (Applicant) v. Retail, Wholesale Canada, Local 461 Canadian Service Sector Division of the United Steelworkers of America Production Employees (Respondent) v. Weston Bakeries Ltd. (Intervener) (Dismissed)

**0010-97-U:** Ontario Nurses' Association (Applicant) v. Kristus Darzs Latvian Home (Astrida Kalnins and Maris Inveiss) (Respondent) (Dismissed)

**0151-97-U:** Canadian Union of Public Employees, Local 3475 (Applicant) v. North York Board of Education and Manuela Gabato (Respondents) (Withdrawn)

**0158-97-U:** Nhan Pham (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervener) (Dismissed)

**0221-97-U:** William Gordon Switzer (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 1459 (Respondents) v. Chrysler Canada Ltd. (Intervener) (Dismissed)

**0336-97-U:** Cathie Fleming, Jamie Furlan, Theresa Tiedeman, Kathy Clark, and Brenda Kukura (Applicant) v. London and District Service Workers Union Local 220 (Respondent) v. St. Joseph's Health Centre, Sarnia General Hospital (Interveners) (Withdrawn)

**0370-97-U:** Sheet Metal Workers' International Union, Local 540 (Applicant) v. Fabricated Plastics Limited (Respondent) (Withdrawn)

**0371-97-U:** United Steelworkers of America (Applicant) v. Burns International Security Services Limited (Respondent) (Dismissed)

**0472-97-U:** United Food and Commercial Workers International Union (Applicant) v. Women's Health in Women's Hands Community Health Centre (Respondent) (Withdrawn)

**0666-97-U:** London & District Service Workers' Union Local 220 S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Meaford General Hospital (Respondent) (Withdrawn)

- 0673-97-U:** Daniel Henry (Applicant) v. Local 113 Amalgamated Transit Union (Respondent) v. Toronto Transit Commission (Intervener) (Dismissed)
- 0688-97-U:** Gilberto Contreras (Applicant) v. Service Employees International Union Business Agent: Brad Philp, Local 204 (Respondent) (Dismissed)
- 0716-97-U:** Canadian Union of Operating Engineers and General Workers (Applicant) v. Pet-Pak Containers Inc. (Respondent) (Withdrawn)
- 0719-97-U:** Avak Garabedian (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervener) (Dismissed)
- 0720-97-U:** Francoise Green (Applicant) v. Association of Allied Health Professionals: Ontario (Respondent) (Withdrawn)
- 0775-97-U:** Sharon Furtah (Applicant) v. Hotel-Dieu Grace Hospital and The Service Employees Union, Local 210 (Respondents) (Withdrawn)
- 0777-97-U:** Communication, Energy & Paperworkers Union of Canada, Local 1104 - Association of Toronto Secondary School Secretaries (Applicant) v. The Board of Education for the City of Toronto (Respondent) (Withdrawn)
- 0823-97-U:** United Food and Commercial Workers International Union, Local 1977 (Applicant) v. Knechtel Foodmarket (Respondent) (Withdrawn)
- 0976-97-U:** London and District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O. (Applicant) v. Samuel's of London Inc. (Respondent) (Granted)
- 0985-97-U:** Domenico Spota (Applicant) v. Local Union 183 Trust Administration (Respondent) (Withdrawn)
- 0997-97-U:** Janet Irene Martin (Applicant) v. C.A.M.A. (Custodial and Maintenance Association) (Respondent) (Withdrawn)
- 1006-97-U:** Labourers' International Union of North America, Local 183 (Applicant) v. Waterford Building Maintenance Inc. (Respondent) (Withdrawn)
- 1041-97-U:** Canadian Union of Public Employees (Applicant) v. Childhood Community Resource Centre (Respondent) (Withdrawn)
- 1042-97-U:** Jim Winn, Union Representative, Canadian Auto Workers, Local 088, Ingersoll, Ont. (Applicant) v. Mark Dylowicz, Supervisor, Cami Automotive Inc., Ingersoll, Ont. (Respondent) (Withdrawn)
- 1085-97-U:** David Donnelly (Applicant) v. Don Park Inc. c.o.b. as Don Park Fire Protection Systems ("Don Park") and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 (Respondents) (Withdrawn)
- 1105-97-U:** Ontario Public Service Employees Union (Applicant) v. Morton Youth Services, Orolea Hall (Respondent) (Withdrawn)
- 1137-97-U:** United Steelworkers of America (Applicant) v. Wal-Mart Canada Ltd. (Respondent) (Withdrawn)
- 1176-97-U:** Canadian Union of Public Employees and its Local 3011.01 (Applicant) v. Algonquin College Students' Association Corporation (Respondent) (Withdrawn)
- 1190-97-U:** Canadian Union of Public Employees (Applicant) v. Barrie Manor Retirement Home (Respondent) (Withdrawn)

**1273-97-U:** Keeprite Workers' Independent Union (Applicant) v. National Refrigeration and Air Condition Products Inc., Canada and Vic Saccoccio and Bill White (Respondents) (Withdrawn)

**1299-97-U:** Stephanie Crawford (Applicant) v. Service Employees International Union and Communications Energy and Paperworkers Union (Respondents) (Withdrawn)

**1444-97-U:** Canadian Union of Public Employees (Applicant) v. Haven House Inc. (Respondent) (Dismissed)

**1459-97-U:** Canadian Union of Public Employees Local 3805 (Applicant) v. Health Sector Training and Adjustment Program (Respondent) (Withdrawn)

**1557-97-U:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Bombardier Inc. (Respondent) (Withdrawn)

**1754-97-U:** John Crane, Member Local 837 (Applicant) v. The Labourers' International Union of North America, Local 837 (Respondent) (Dismissed)

**1869-97-U:** Michelle Rondeau (Applicant) v. Robert Dickson, Superintendent, Sarnia Jail (Respondent) (Dismissed)

## **APPLICATION FOR INTERIM ORDER**

**1288-97-M:** United Steelworkers of America (Applicant) v. Windsor Airline Limousine Services Limited a/o Veteran Cab Company and Capital Cab Company and those parties listed on Schedules "D" and "E" (Respondents) (Withdrawn)

## **APPLICATIONS FOR CONSENT TO PROSECUTE**

**2781-96-U:** Retail Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America and Local 1688, The Ontario Taxi Union (Applicant) v. Saleem Irshad, Fardin Ayatti Ghaffari, Kami Salehi, Jim Bell and Diamond Taxicab Association (Toronto) Limited (Respondents) v. Diamond Taxicab Associates' Committee (Intervener) (Endorsed Settlement)

## **APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT**

**1472-97-M:** United Food and Commercial Workers International Union Local 351 (Applicant) v. Unifirst Canada Ltd. (Respondent) (Granted)

**1473-97-M:** United Food and Commercial Workers International Union, Local 351 (Applicant) v. Unifirst Canada Ltd. (Respondent) (Granted)

**1525-97-M:** Canadian Linen Supply Co. Ltd. and United Food and Commercial Workers International Union Local 351 (Applicant) v. Canadian Linen Supply Company Ltd. (Respondent) (Granted)

**1633-97-M:** International Union of Allied, Novelty and Production Workers' Union, Local 905 (Applicant) v. Randomlane Industries Limited (Respondent) (Granted)

## **FINANCIAL STATEMENT**

**0883-97-M:** John Crane (Applicant) v. The Labourers' International Union of North America Local 837 (Respondent) (Terminated)



## COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

**1517-94-OH:** Pauline Au (Applicant) v. Lyndhurst Hospital (Respondent) (Dismissed)

**0077-96-OH:** Margaret Chan (Applicant) v. Ontario Hydro (Respondent) v. The Society of Ontario Hydro Professional and Administrative Employees (The Society) (Intervener) (Dismissed)

**1252-96-OH:** James Mensah (Applicant) v. 401 - Dixie Auto Collision Limited (Respondent) (Withdrawn)

**2308-96-OH:** Ontario Public Service Employees Union, Bill Walls (Applicant) v. The Crown in Right of Ontario (Ministry of the Solicitor General and Correctional Services) and I. Hadden, A. Dvorak, R. Lundy (Respondent) (Dismissed)

**0084-97-OH:** Ralph Jenkins (Applicant) v. Kathy Woram (Respondent) (Withdrawn)

**0464-97-OH:** Diane Digiandomenico (Applicant) v. Oakwood Air Limited (Respondent) (Withdrawn)

**0737-97-OH:** Attila Kigyosi (Applicant) v. Kohl & Frisch Ltd. (Respondent) (Dismissed)

**0913-97-OH:** Sharon Rodriques (Applicant) v. DeVry Institute of Technology (Respondent) (Dismissed)

**1077-97-OH:** Harold Shular (Applicant) v. Wark Milk Transport Limited (Respondent) (Withdrawn)

**1300-97-OH:** Stephanie Crawford (Applicant) v. Service Employees International Union and Communications Energy and Paperworkers Union (Respondents) (Withdrawn)

## CONSTRUCTION INDUSTRY GRIEVANCES

**3489-94-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Downsview Plumbing & Heating Company Limited and Norfinch Plumbing & Heating Limited and Markel Plumbing Limited (Respondents) (Withdrawn)

**4684-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. P.A. Grant Electric Ltd. (Respondent) (Granted)

**4685-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Boland-Wilnder Electrical Services Ltd. (Respondent) (Granted)

**4686-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. J.R. Ferguson Electric Ltd. (Respondent) (Granted)

**4687-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. E.S. Fox Ltd. (Respondent) (Granted)

**4688-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Black & McDonald Limited (Respondent) (Granted)

**4689-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. M.J. Fraser Electric Ltd. (Respondent) (Granted)

**4690-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Cloud Bay Electric Inc. (Respondent) (Granted)

**4691-94-G:** International Brotherhood of Electrical Workers Local 402 (Applicant) v. James Currie Electric Limited (Respondent) (Granted)

**4692-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. 846064 Ontario Limited, carrying on business under the firm name and style of B-Mac Controls (Respondent) (Granted)

**4693-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Ontario Electrical Construction Co. Ltd. (Respondent) (Granted)

**4694-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. C.A. Johnson Electric Limited (Respondent) (Granted)

**4695-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. White Pine Electric Ltd. (Respondent) (Granted)

**4696-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. T.R. Kelly Electric Ltd. (Respondent) (Granted)

**4697-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. 897423 Ontario Inc., carrying on business under the firms name and style of TLC Power Systems (Respondent) (Granted)

**4698-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Venasky-Pouru Electric Limited (Respondent) (Granted)

**4699-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. 686948 Ontario Limited, carrying on business under the firm name and style of North West Electric (Respondent) (Granted)

**4700-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Marvac Industrial Electric Ltd. (Respondent) (Granted)

**4701-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. LBT Electric Inc. (Respondent) (Granted)

**4702-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Quegeco Inc. (Respondent) (Granted)

**4703-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. D.R. McCormick Electric Limited (Respondent) (Granted)

**4704-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. N.W.D. Diesel Power Ltd. (Respondent) (Granted)

**4705-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. B.A. Norris Electric Co. Ltd. (Respondent) (Granted)

**4706-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Powertel Utilities Contractors Limited (Respondent) (Granted)

**4707-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Peterson Electric Co. Limited (Respondent) (Granted)

**4708-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. G. Prezio Electrical Ltd. (Respondent) (Granted)

**4710-94-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. 663702 Ontario Limited, carrying on business under the firm name and style of Reliable Electric (Respondent) (Granted)

**0062-95-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. D.R. Thomas Electric (Respondent) (Granted)

**0063-95-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Superior Electric (Respondent) (Granted)

**0064-95-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Riteway Electric (Respondent) (Granted)

**0065-95-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Rajala Electric (Respondent) (Granted)

**0066-95-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Park Electric (Respondent) (Granted)

**0067-95-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Commercial Electric (Respondent) (Granted)

**0068-95-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. A.C.E. Electrical Contracting (Respondent) (Granted)

**0069-95-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Thunder Bay Electric (Respondent) (Granted)

**3503-95-G:** Ontario Pipe Trades Council and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Alduco Mechanical Contractors Limited, Appleton-Air Conditioning Limited and Westor Plumbing and Heating Limited (Respondent) v. Bill Shank, Harvey Bates and Guy Pelletier (Intervenors) (Endorsed Settlement)

**4088-95-G; 0892-96-G:** International Union of Bricklayers and Allied Craftsmen, Local 7 - Canada (Applicant) v. Eton Construction Ltd. (Respondent); International Union of Bricklayers and Allied Craftworkers, Local 2, Toronto, Barrie, Ontario and the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftworkers (Applicants) v. Eton Construction Ltd. (Granted)

**0567-96-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 663 (Applicant) v. Chemfab Mechanical (Respondent) (Dismissed)

**1372-96-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Trafalgar Mechanical Inc. (Respondent) (Withdrawn)

**2189-96-G:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Empire Lathing and Insulating Company Limited and Empire Drywall Inc. and Old Mark Construction Ltd. (Respondents) (Withdrawn)

**2399-96-G:** Ontario Allied Construction Trades Council and Labourers' International Union of North America, Local 506 (Applicant) v. Ontario Hydro and The Electrical Power Systems Construction Association (Respondents) (Dismissed)

**2613-96-G; 3362-96-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. The Municipality of Metropolitan Toronto (Respondent) v. Labourers' International Union of North America, Local 183 (Intervener) (Withdrawn)

**2642-96-G; 3462-96-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Marli Mechanical Ltd. (Respondent); United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Marli Mechanical (Respondent) (Granted)

**3575-96-G:** Sheet Metal Workers' International Association, Local 30 (Applicant) v. Trio Roofing Ltd. (Respondent) (Granted)



**3588-96-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Plan Electric Ltd. (Respondent) (Withdrawn)

**4057-96-G:** Ontario Allied Construction Trades Council and Labourers' International Union of North America, Local 506 (Applicant) v. Ontario Hydro, Parsons Turbine Generator Canada Ltd. and The Electrical Power Systems Construction Association (Respondents) (Granted)

**4321-96-G:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Marli Mechanical Limited and Plumatic Inc. (Respondents) (Withdrawn)

**0201-97-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Cobra Drain & Development Corp. (Respondent) (Endorsed Settlement)

**0484-97-G:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. The Municipality of Metropolitan Toronto (Respondent) v. Labourers' International Union of North America, Local 183 (Intervener) (Withdrawn)

**0713-97-G:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Westor Plumbing and Heating Limited (Respondent) (Withdrawn)

**0756-97-G:** United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. Senator Hotels Limited (Respondent) (Granted)

**0874-97-G:** International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. Scotco Insulation Services Inc. (Respondent) (Withdrawn)

**1195-97-G:** Labourers' International Union of North America, Local 183 (Applicant) v. 675602 Ontario Ltd. (Respondent) (Endorsed Settlement)

**1203-97-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 800 (Applicant) v. Honeywell Limited (Respondent) (Withdrawn)

**1238-97-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Cobra Drain & Development Corporation (Respondent) (Endorsed Settlement)

**1241-97-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Mariofino Contracting Inc. (Respondent) (Granted)

**1332-97-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Positive Services Ltd. (Respondent) (Withdrawn)

**1397-97-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Comstock Canada Ltd. (Respondent) (Granted)

**1401-97-G:** Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Dufferin Drywall and Acoustic Ltd. (Respondent) (Endorsed Settlement)

**1407-97-G:** Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Ziggy's General Contracting (Respondent) (Withdrawn)

**1410-97-G:** Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Klescon General Contracting Ltd. (Respondent) (Withdrawn)

**1478-97-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Peerless Window Equipment Limited (Respondent) (Endorsed Settlement)

**1480-97-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Black Forming Company Limited, and 796249 Ontario Ltd. (Respondent) (Withdrawn)

**1531-97-G:** International Union of Operating Engineers, 793 (Applicant) v. H. Kerr Construction Ltd. (Respondent) (Granted)

**1540-97-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. Walters Inc. (Respondent) (Withdrawn)

**1568-97-G:** Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Inex Drywall (Respondent) (Withdrawn)

**1582-97-G:** International Brotherhood of Painters and Allied Trades, Local Union 1819 (Applicant) v. Royaltech Glazing Systems Ltd. (Respondent) (Endorsed Settlement)

**1635-97-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Fourwinds Construction Inc. (Respondent) (Granted)

**1637-97-G:** International Brotherhood of Painters & Allied Trades, Glaziers Local 1819 (Applicant) v. Youngs Glass & Aluminum (Respondent) (Withdrawn)

**1744-97-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Provincial Electrical Contractors (1988) Ltd. (Respondent) (Withdrawn)

**1745-97-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Lynx Cabling Systems Ltd. (Respondent) (Withdrawn)

**1749-97-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Triple A-96-Electric Ltd. (Respondent) (Granted)

**1751-97-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Force Electric A Division of 669070 Ontario Ltd. (Respondent) (Granted)

**1769-97-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 463 (Applicant) v. Calorific Construction Limited (Respondent) (Endorsed Settlement)

**1813-97-G:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Strap Drywall and Acoustic Systems Limited (Respondent) (Granted)

## APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

**0791-95-G:** International Union of Bricklayers and Allied Craftsmen, Local 28 (Applicant) v. Base Construction Inc., Provincial Masonry Inc., and all of affiliated and/or subsidiary companies including 1116731 Ontario Inc., 1106102 Ontario Inc., 825153 Ontario Inc., A.B. Tile Ltd., Provincial Masonry Inc., Provincial Masonry Group Inc., 1000555 Ontario Inc., 1000554 Ontario Inc., 1025215 Ontario Inc., 1047421 Ontario Inc. 980368 Ontario Inc., and 1106102 Ontario Inc., 1025213 Ontario Inc. o/a Provincial Masonry (Respondents) (Granted)

**0831-96-R; 0834-96-U:** IBEW Construction Council of Ontario (Applicant) v. Pietro Electric Limited (Respondent) (Granted)

**3527-96-U:** Rocco Tassone (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervener) (Dismissed)

**3899-96-U:** Sylvia Marguerite Bourgeois (Applicant) v. London and District Service Workers' Union, Local 220 (Respondent) v. London Health Sciences Centre (Intervener) (Denied)

**4358-96-U:** Hormuz Rahana (Applicant) v. United Food and Commercial Workers International Union Local 114P (Respondent) (Denied)

**0862-97-R:** Drivers and Independent Contractors, Local 1688 Retail Wholesale Canada, working under Union Taxi Sign North Bay (Applicant) v. Retail Wholesale Canada Canadian Service Sector Division of the United Steel Workers Local 1688 Ontario Taxi Union (Respondent) v. Union Taxi (Intervener) (Dismissed)

**1097-97-U:** Claudio Console (Applicant) v. J. Hareguy, M. Flood, P. Young, A. Tamane, R. Gardner, T. Barrie, T. Clinton (Respondent) (Dismissed)



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# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING SEPTEMBER 1997

## APPLICATIONS FOR CERTIFICATION

### Bargaining Agents Certified Without Vote

**1329-95-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Metric Tile Ltd. (Respondent) v. Marble, Tile & Terrazzo Union, Local 31 affiliated with International Union of Bricklayers and Allied Craftsmen (Intervener)

Unit: "all marble, tile and terrazzo workers, cement masons and their helpers, and their respective apprentices, and improvers in all sectors of the construction industry employed by Metric Tile Ltd. in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except the industrial, commercial and institutional sector, and save and except non-working foremen and persons above the rank of non-working foreman, and save and except those persons already represented by a Trade Union" (10 employees in unit) (*Having regard to the agreement of the parties*)

**1897-95-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Moscone Tile Ltd. (Respondent) v. Marble, Tile & Terrazzo Union, Local 31 affiliated with International Union of Bricklayers and Allied Craftsmen (Intervener)

Unit: "all marble, tile and terrazzo workers, cement masons and their helpers, and their respective apprentices, and improvers in all sectors of the construction industry employed by Moscone Tile Ltd. in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except the industrial, commercial and institutional sector, and save and except non-working foremen and persons above the rank of non-working foreman, and save and except those persons already represented by a Trade Union" (2 employees in unit)

### Bargaining Agents Certified under Section 11 of the Act

**3867-96-R:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada ("O.P.C."), and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada ("U.A.") (Applicant) v. Marsil Mechanical Inc. ("Marsil") (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Marsil Mechanical Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Marsil Mechanical Inc. in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industry, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

### Bargaining Agents Certified Subsequent to Vote

**3317-96-R:** United Steelworkers of America (Applicant) v. KPM Industries Ltd. (Respondent)



Unit: “all employees of KPM Industries Ltd. in the Town of Onaping Falls, save and except Managers and persons above the rank of Manager and office, clerical and sales staff” (12 employees in unit)

Number of names of persons on revised voters’ list	13
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	13
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	4

**3612-96-R:** Union of Needletrades, Industrial and Textile Employees Ontario District Council (Applicant) v. Black Photo Corporation (Respondent) v. Group of Employees (Objectors)

Unit: “all employees of Black Photo Corporation at 371 Gough Road in the Town of Markham, save and except Team Leaders and persons above the rank of Team Leaders, office, clerical and sales staff” (146 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters’ list	153
Number of persons who cast ballots	139
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	128
Number of segregated ballots cast by persons whose names appear on voter’s list	10
Number of segregated ballots cast by persons whose names do not appear on voters’ list	1
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	65
Number of ballots marked against applicant	61
Number of ballots segregated and not counted	11

**0124-97-R:** International Brotherhood of Painters and Allied Trades, Local Union 557 (Applicant) v. The Board of Education for the City of North York (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local 3219 (Intervener)

Unit: “all painters and painters’ apprentices in the employ of The Board of Education for the City of North York, in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters’ apprentices in the employ of The Board of Education for the City of North York, in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (18 employees in unit) (*Clarity Note*)

Number of names of persons on revised voters’ list	19
Number of persons who cast ballots	18
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	0

**0130-97-R:** International Brotherhood of Painters and Allied Trades, Local Union 1819 (Glaziers) (Applicant) v. The Board of Education for the City of North York (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local 3219 (Intervener)

Unit: “all journeymen and apprentice glaziers and metal mechanics in the employ of The Board of Education for the City of North York, in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice glaziers and metal mechanics in the employ of The Board of Education for the City of North York in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and

institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	9
Number of ballots marked in favour of applicant	8
Number of ballots segregated and not counted	1

**0245-97-R:** Teamsters Local Union No. 419 (Applicant) v. Martha's Garden Inc. (Respondent)

Unit: "all employees of Martha's Garden Inc. in the Municipality of Metropolitan Toronto, save and except managers, persons above the rank of manager and office and sales staff" (10 employees in unit)

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	15
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	11

**1000-97-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Canadian Waste Services Inc. (Respondent) v. Canadian Union of Public Employees (Intervener)

Unit: "all employees of Canadian Waste Services Inc. in the City of St. Catherines, save and except Supervisors, persons above the rank of Supervisor, dispatchers, office and sales staff" (40 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	55
Number of persons who cast ballots	47
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	44
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	19
Number of ballots segregated and not counted	3
Number of names of persons on revised voters' list	67
Number of persons who cast ballots	61
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	60
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	48
Number of ballots marked in favour of intervener	13

**1143-97-R:** United Steelworkers of America (Applicant) v. Provincial Security Services Ltd. (Respondent)

Unit: "all employees of Provincial Security Services Ltd. in the Regional Municipality of Metropolitan Toronto, the City of Mississauga, the City of Brampton, the City of Vaughan, the City of Oakville, the City of Aurora, and the City of Newmarket, save and except Mobile and Site Supervisors, persons above the rank of Mobile and Site Supervisor, office, clerical and sales staff, and persons for whom any trade union held bargaining rights as of July 3, 1997" (179 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	159
Number of persons who cast ballots	88
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	82
Number of segregated ballots cast by persons whose names appear on voter's list	1

Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of ballots marked in favour of applicant	55
Number of ballots marked against applicant	27
Number of ballots segregated and not counted	6

**1285-97-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Sivaco Ontario (Respondent)

Unit: "all employees of Sivaco Ontario, in the City of Ingersoll, Ontario, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff and persons covered by a previous Ontario Labour Relations Board certificate" (0 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	1

**1415-97-R:** Canadian Union of Public Employees (Applicant) v. Good Shepherd Refuge Social Ministries (Respondent)

Unit: "all employees of the Good Shepherd Refuge Social Ministries in the Municipality of Metropolitan Toronto, save and except Directors, Fundraiser, Payroll/Accounting Clerks and Secretary to the Executive Director" (25 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	33
Number of persons who cast ballots	29
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	14
Number of names of persons on revised voters' list	33
Number of persons who cast ballots	29
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	14

**1542-97-R:** Canadian Union of Public Employees (Applicant) v. Township of Fenelon (Respondent)

Unit: "all employees of the Township of Fenelon, save and except Superintendent, persons above the rank of Superintendent, the Office Assistant and students employed during the school vacation period" (10 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	1

**1576-97-R:** International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada (Applicant) v. Shaw Festival Theatre Foundation (Respondent)

Unit: "all employees of Shaw Festival Theatre Foundation Audience Services Department in the Town of Niagara-On-The-Lake, save and except floor supervisors and persons above the rank of floor supervisor" (51 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)



Number of names of persons on revised voters' list	101
Number of persons who cast ballots	79
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	41
Number of segregated ballots cast by persons whose names appear on voter's list	37
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	23
Number of ballots segregated and not counted	38

**1612-97-R:** I.W.A. Canada, Local 2693 (Applicant) v. Industrial Hardwood Products Ltd. (Respondent)

Unit: "all employees of Industrial Hardwood Products Ltd., save and except foreman, persons above the rank of foreman and office staff" (33 employees in unit)

Number of names of persons on revised voters' list	35
Number of persons who cast ballots	33
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	17
Number of ballots segregated and not counted	4

**1614-97-R:** Labourers' International Union of North America, Local 506 (Applicant) v. Canadian Waste Services Inc. (Respondent)

Unit: "all employees of Canadian Waste Services Inc., employed at 5 Brydon Drive, in the City of Etobicoke, save and except supervisors, persons above the rank of supervisor, office, sales staff and persons covered by subsisting collective agreements or certificates" (22 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	18
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	11
Number of ballots segregated and not counted	1

**1733-97-R:** Ontario Public Service Employees Union (Applicant) v. Shared Hospital Laboratory Inc. (SHLI) (Respondent)

Unit: "all employees of Shared Hospital Laboratory Inc. (SHLI) in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, students in training and students employed during the school vacation period" (17 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	2

**1736-97-R:** Glass, Molders, Pottery, Plastics & Allied Workers International Union (Applicant) v. Cinran Plastics Inc. (Respondent)

Unit: "all employees of Cinran Plastics Inc. in the City of London, save and except foreman, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (79 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	83
Number of persons who cast ballots	81
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	74
Number of segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	51
Number of ballots marked against applicant	24
Number of ballots segregated and not counted	6

**1772-97-R:** Glass, Molders, Pottery, Plastics & Allied Workers International Union (Applicant) v. Stadco Polyproducts Inc. (Respondent)

Unit: "all employees of Stadco Polyproducts Inc. in the City of Mississauga, Ontario, save and except forepersons, persons above the rank of foreperson, office and sales staff and persons regularly employed for not more than 24 hours per week" (22 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	30
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	7

**1789-97-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Loeb Inc. (Respondent)

Unit: "all employees of Loeb Inc. employed at 775 Bayridge Drive in the City of Kingston, save and except Department Managers, persons above the rank of Department Manager, the Head Cashier, the Bookkeeper and employees in the bargaining units for which any trade union held bargaining rights as of August 14, 1997" (99 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	99
Number of persons who cast ballots	82
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	82
Number of ballots marked in favour of applicant	77
Number of ballots marked against applicant	5

**1826-97-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Weston Bakeries Limited c.o.b. The Weston Fruitcake Company (Respondent)

Unit: "all employees of Weston Bakeries Limited c.o.b. The Weston Fruitcake Company in the Town of Cobourg, save and except supervisors, persons above the rank of supervisor, office, sales and technical staff" (74 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	74
Number of persons who cast ballots	74
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	74
Number of ballots marked in favour of applicant	41
Number of ballots marked against applicant	33

**1851-97-R:** Communications, Energy and Paperworkers Union, Local 87-M, Southern Ontario Newspaper Guild (Applicant) v. The Kitchener-Waterloo Record, a Division of Southam Inc. (Respondent) v. Record Mechanical Employees Association (Intervener)

Unit: "all employees of The Kitchener-Waterloo Record, a Division of Southam Inc. its Reader Sales and Service Department in the City of Kitchener, save and except Supervisor and persons above the rank of Supervisor" (372 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	36
Number of persons who cast ballots	26
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	24
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	22
Number of ballots marked in favour of intervener	2
Number of ballots segregated and not counted	2

**1852-97-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Froio Carpentry (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Froio Carpentry in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Froio Carpentry in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham and the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of applicant	4

**1891-97-R:** United Food and Commercial Workers International Union (Applicant) v. Inco Limited c.o.b. as Copper Cliff Club (Respondent) v. United Steelworkers of America (Intervener)

Unit: "all employees of Inco Limited at the Copper Cliff Club, 29 Creighton Road in the Regional Municipality of Sudbury, save and except Executive Chef, Dining Room Hostess/Manager and Copper Cliff Club Coordinator and persons regularly employed for not more than 24 hours per week and students employed during the school vacation period and persons for whom another trade union held bargaining rights as of the date of application" (6 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	0

**1924-97-R:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Iervasi Roofing (Respondent)

Unit: "all roofers and their helpers and metalmen employed as dependent contractors in the employ of the responding party in all sectors of the construction industry in, the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of



Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	3

**1939-97-R:** United Food and Commercial Workers International Union (Applicant) v. Inco Limited c.o.b. Copper Cliff Club (Respondent) v. United Steelworkers of America (Intervener)

Unit: "all employees of Inco Limited at the Copper Cliff Club at 29 Creighton Road in the Regional Municipality of Sudbury, regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except Executive Chef, Dining Room Hostess/Manager and Copper Cliff Club Coordinator and persons above those ranks" (16 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	1

**1968-97-R:** Canadian Union of Public Employees (Applicant) v. York University (Respondent) v. United Plant Guard Workers of America, Local 1962 (Intervener)

Unit: "all Security and Parking Officers in the Department of Safety, Security & Parking Services employed to protect the property of York University in Metropolitan Toronto regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except Supervisors and persons above the rank of Supervisor" (139 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	134
Number of persons who cast ballots	50
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	48
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	48
Number of ballots marked in favour of intervener	1

**1997-97-R:** United Steelworkers of America (Applicant) v. Bradson Toronto Inc. (Respondent)

Unit: "all employees of Bradson Toronto Inc. at 230 Richmond Street West in the Municipality of Metropolitan Toronto, save and except Call Centre Team Leader and persons above the rank of Call Centre Team Leader" (13 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	2

**2003-97-R: Amalgamated Transit Union (Applicant) v. 944764 Ontario Ltd. c.o.b. as Your Choice Transportation (Respondent)**

Unit: "all employees of 944764 Ontario Ltd. c.o.b. as Your Choice Transportation in the Town of Orillia employed as drivers, save and except Supervisors, persons above the rank of Supervisor, office and clerical staff" (77 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	77
Number of persons who cast ballots	64
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	55
Number of segregated ballots cast by persons whose names appear on voter's list	9
Number of ballots marked in favour of applicant	37
Number of ballots marked against applicant	26
Number of ballots segregated and not counted	1

**2049-97-R: Ontario Secondary School Teachers' Federation (Applicant) v. Board of Education for the City of Windsor (Respondent)**

Unit: "all Educational Associates employed by The Board of Education for the City of Windsor, in contract support staff positions and/or temporary positions in the following occupational classifications: Child and Youth Workers; Developmental Service Workers; Early Childhood Educators; Support Workers for the Hearing Impaired; and Non-teaching Aids" (46 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	44
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	39
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of ballots marked in favour of applicant	38
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	5

**2068-97-R: Union of Needletrades, Industrial & Textile Employees (UNITE) (Applicant) v. Richards-Wilcox Custom Systems Inc. (Respondent)**

Unit: "all employees of Richards-Wilcox Custom Systems Inc. in the Regional Municipality of Peel, save and except Supervisors and persons above the rank of Supervisor, office and sales staff" (12 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	4

**2120-97-R: Ontario Public School Teachers' Federation (Applicant) v. Dufferin County Board of Education (Respondent)**

Unit: "all employees of the Dufferin County Board of Education employed as child and youth care workers, social workers and attendance counsellors in the County of Dufferin, save and except supervisors and persons above the rank of supervisor" (12 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of ballots marked in favour of applicant	11

### Applications for Certification Dismissed Without Vote

**2005-97-R:** Canadian Union of Professional Security Guards (Applicant) v. Evan's Investigation and Security Limited (Respondent)

### Applications for Certification Dismissed Subsequent to Vote

**0345-97-R:** Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 141 (Applicant) v. U-Need-A Cab Limited (Respondent)

Unit: "all employees of U-Need-A Cab Limited operating under the roof sign 'U-Need-A' in the City of London, save and except supervisors, dispatchers, persons above the rank of supervisor or dispatcher and office and clerical staff" (350 employees in unit)

Number of names of persons on revised voters' list	381
Number of persons who cast ballots	354
Number of ballots, excluding segregated ballots, cast by persons whose names appear on voters' list	302
Number of segregated ballots cast by persons whose names appear on voters' list	22
Number of segregated ballots cast by persons whose names do not appear on voters' list	30
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	137
Number of ballots marked against applicant	174
Number of ballots segregated and not counted	43

**0822-97-R:** United Food and Commercial Workers International Union, Local 1977 (Applicant) v. 988095 Ontario Inc. carrying on business as Wallaceburg Knechtel Foodmarket ("Knechtel") (Respondent)

Unit: "all employees of Knechtel Foodmarket in the Town of Wallaceburg, Ontario, save and except office and clerical employees, head cashier, department managers and anyone above the rank of department manager" (59 employees in unit)

Number of names of persons on revised voters' list	60
Number of persons who cast ballots	46
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	43
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	42
Number of ballots segregated and not counted	3

**0953-97-R:** Canadian Union of Public Employees (Applicant) v. The Peel Board of Education (Respondent)

Unit: "all Continuing Education Instructors employed as Adult English as a Second Language Instructor for the Peel Board of Education in the Regional Municipality of Peel, save and except Co-ordinators, persons above the rank of Co-ordinator and persons for whom a trade union held bargaining rights on the date of application" (97 employees in unit)

Number of names of persons on revised voters' list	99
Number of persons who cast ballots	84
Number of ballots, excluding segregated ballots, cast by persons whose names appear on voters' list	74
Number of segregated ballots cast by persons whose names do not appear on voters' list	10
Number of ballots marked in favour of applicant	51
Number of ballots marked against applicant	23
Number of ballots segregated and not counted	10



**1019-97-R:** Canadian Health Care Workers (C.H.C.W.) (Applicant) v. Grand River Hospital Corporation (Respondent) v. London and District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Intervener)

Unit: "all employees of Kitchener-Waterloo Health Centre in the City of Kitchener, save and except professional medical staff, graduate nursing staff, undergraduate nurses, paramedical personnel, office and clerical staff, supervisors, persons above the rank of supervisor, chief engineer, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period, and employees in the bargaining units for which any trade union held bargaining rights as of February 17, 1988" (248 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	245
Number of persons who cast ballots	171
Number of ballots marked in favour of applicant	46
Number of ballots marked in favour of intervener	125
Number of ballots segregated and not counted	0

**1020-97-R:** Canadian Health Care Workers (C.H.C.W.) (Applicant) v. Grand River Hospital Corporation (Respondent) v. London and District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Intervener)

Unit: "all office and clerical employees of Kitchener-Waterloo Health Centre in Kitchener, Ontario, save and except the secretaries to the President, Vice-President of Operations and Professions Services, Vice-President of Human Resources, Vice-President of Finance and Administration, the Director of Public Relations, the Personnel Clerk, supervisors, persons above the rank of supervisor." (2000 employees in unit)

Number of names of persons on revised voters' list	239
Number of persons who cast ballots	143
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	89
Number of segregated ballots cast by persons whose names appear on voter's list	54
Number of ballots marked in favour of applicant	28
Number of ballots marked in favour of intervener	61
Number of ballots segregated and not counted	54

**1620-97-R:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Bombardier Inc. (Respondent)

Unit: "all employees employed by the responding party working at or out of the GO Willowbrook Facility, save and except supervisors, persons above the rank of supervisor, technical support staff, planners, quality control inspectors, office, clerical, and sales staff, building and car cleaning personnel and security guards" (121 employees in unit)

Number of names of persons on revised voters' list	124
Number of persons who cast ballots	112
Number of ballots marked in favour of applicant	54
Number of ballots marked against applicant	58

**1739-97-R:** United Food and Commercial Workers International Union, A.F.L., C.I.O., C.L.C., Local 617P (Applicant) v. Brick Brewing Company (Respondent)

Unit: "all employees in the Regional Municipality of Waterloo, save and except supervisors, those above the rank of supervisor, office and clerical staff, tour guides, part-time employees and students employed during the school vacation period" (45 employees in unit)

Number of names of persons on revised voters' list	49
Number of persons who cast ballots	47
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	40
Number of segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names do not appear on voters' list	1

Number of spoiled ballots	1
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	30
Number of ballots segregated and not counted	7

**1796-97-R:** International Union of Operating Engineers Local 772 (Applicant) v. Fluid Pack International Limited (Respondent)

Unit: "all production employees of Fluid Pack International employed at the 460 Newbold Street facility, London, Ontario, save and except Supervisors, persons above the rank of Supervisor, office staff and students employed during the school vacation period" (18 employees in unit)

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	10

**1818-97-R:** Ontario Public Service Employees Union (Applicant) v. Orillia & District Association for Community Living (Respondent)

Unit: "all employees of Orillia & District Association for Community Living in the County of Simcoe, save and except supervisors, persons above the rank of supervisor, office and clerical employees, students employed for the summer and clients working at Orillia Wood Working" (135 employees in unit)

Number of names of persons on revised voters' list	116
Number of persons who cast ballots	85
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	78
Number of segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	26
Number of ballots marked against applicant	58

**1904-97-R:** United Food and Commercial Workers International Union (Applicant) v. Bath Creations (Respondent)

Unit: "all employees of Bath Creations in the Municipality of Metropolitan Toronto, save and except the Assistant Manager and those employees above the rank of Assistant Manager" (33 employees in unit)

Number of names of persons on revised voters' list	36
Number of persons who cast ballots	37
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	36
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	18
Number of ballots segregated and not counted	1

**1918-97-R:** Sheet Metal Workers' International Association, Local 652 (Applicant) v. RodCo Mechanical Inc. (Respondent)

Unit: "all journeymen and apprentice sheet metal workers in the employ of RodCo Mechanical Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen and apprentice sheet metal workers in the employ of RodCo Mechanical Inc. in all other sectors of the construction industry in the Regional Municipality of Waterloo (except that portion of the geographic Township

of Beverly annexed by North Dumfries Township), save and except non-working foremen and persons above the rank of non-working foreman" (36 employees in unit)

Number of names of persons on revised voters' list	39
Number of persons who cast ballots	39
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of segregated ballots cast by persons whose names appear on voter's list	10
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	26
Number of ballots segregated and not counted	4

**1973-97-R:** United Brotherhood of Carpenters and Joiners of America, Local Union 1030 (Applicant) v. Metalcraft Marine Incorporated (Respondent)

Unit: "all employees in the employ of Metalcraft Marine Incorporated except supervisors and anyone above the rank of supervisor in the Municipality of Kingston in the County of Frontenac" (22 employees in unit)

Number of names of persons on revised voters' list	35
Number of persons who cast ballots	37
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	23
Number of ballots segregated and not counted	5

**2037-97-R:** United Steelworkers of America (Applicant) v. ISE Inc. (Respondent)

Unit: "all employees of ISE Inc. in the City of Scarborough, save and except Supervisors and persons above the rank of Supervisor, office, clerical and sales staff" (30 employees in unit)

Number of names of persons on revised voters' list	38
Number of persons who cast ballots	136
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	30
Number of segregated ballots cast by persons whose names appear on voter's list	6
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	19
Number of ballots segregated and not counted	6

### Applications for Certification Withdrawn

**2644-95-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Trudel & Son Roofing Ltd. (Respondent) v. Labourers' International Union of North America (Intervener)

**2645-95-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Jackson Roofing (Respondent) v. Labourers' International Union of North America (Intervener)

**2658-95-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Columbus Aluminum & Roofing Ltd. (Respondent) v. Labourers' International Union of North America (Intervener)

**2659-95-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Donia Roofing (Respondent) v. Labourers' International Union of North America (Intervener)



**2660-95-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Chouinard Bros. Roofing (Respondent) v. Labourers' International Union of North America (Intervener)

**2661-95-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Dell'Angelo Bros. Roofing (Respondent) v. Labourers' International Union of North America (Intervener)

**2674-95-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Burnhamthorpe Roofing (Respondent) v. Labourers' International Union of North America (Intervener)

**2675-95-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Maple Roofing (Respondent) v. Labourers' International Union of North America, Local 183 (Intervener)

**2734-95-R:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Cumbrae Roofing Ltd. (Respondent) v. Labourers' International Union of North America (Intervener)

**2633-96-R:** Labourers' International Union of North America Local 183 (Applicant) v. Saddlebrook Construction Inc. (Respondent) (*Terminated*)

**3451-96-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Lynx Environmental Services Ltd. (Respondent)

**1073-97-R:** IBEW Construction Council of Ontario (Applicant) v. Sanjo Electrical Contractors Ltd. (Respondent)

**1511-97-R:** Office and Professional Employees International Union (Applicant) v. Halton Community Credit Union Ltd. (Respondent)

**1971-97-R:** United Brotherhood of Carpenters and Joiners of America, Local Union 1030 (Applicant) v. Kingston Marina Limited (Respondent)

**2046-97-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Palmer Paving & Construction Limited (Respondent)

**2277-97-R:** United Steelworkers of America (Applicant) v. Evans Investigation and Security Limited (Respondent)

## **FIRST AGREEMENT - DIRECTION**

**0424-97-FC:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Hy and Zel's (Respondent) (*Withdrawn*)

## **APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER**

**2115-96-R:** Labourers' International Union of North America, Local 527 (Applicant) v. Vantage Utilities Ltd., Denis Brisbois Holdings Ltd., Denis Brisbois Contractors Ltd., 1091857 Ontario Inc., operating as Orleans Utilities (Respondents) (*Granted*)

**2182-96-R:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Lacon Contracting Inc. and DMD Triangle Lathing and Acoustics Co. Limited and Disal Contracting Ltd. (Respondents) (*Dismissed*)

**2812-96-R:** International Brotherhood of Electrical Workers, Local 804 and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 527 (Applicant) v. Johnson Controls Ltd. and/or Johnson Controls Inc. (Respondents) (*Withdrawn*)

**3341-96-R:** Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 880 (Applicant) v. 1196905 Ontario Ltd. and Windsor Concrete Delivery Ltd. and Windsor Readymixer Leasing Ltd. and Dunn Contracting Ltd. and M.R. Dunn Contractors Ltd. and Advantage Concrete Carriers Ltd. (Respondents) v. International Union of Operating Engineers, Local 793 (Intervener) (*Endorsed Settlement*)

**3515-96-R:** International Union of Bricklayers and Allied Craftsmen Local 1, Ontario (Applicant) v. The Steel Company of Canada, Limited, Stelco Inc. and Lake Erie Steel Company Ltd. (Respondents) (*Granted*)

**3980-96-R:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Henderson Machinery Moving and Installation Limited, 362982 Ontario Limited c.o.b. as Crescent Crane and Float Service, Mississauga Warehousing Ltd., Ace Machinery Movers Ltd., Kaz Driving Services (Respondents) (*Withdrawn*)

**0182-97-R:** International Brotherhood of Painters & Allied Trades, Local Union 200 (Applicant) v. Romita Painters & Decorators Ltd., o/a Villa Painters and Decorators ("Villa") and Canam Interiors Inc. ("Canam") (Respondents) (*Dismissed*)

**0734-97-R:** International Union of Operating Engineers, Local 793 (Applicant) v. C.M. Dipede Group Limited and North Rock Group Ltd. (Respondents) (*Withdrawn*)

**1418-97-R:** United Food & Commercial Workers International Union, Local 175 & 633 (Applicant) v. Impact Cleaning Services Ltd. and Consumers' Gas (Respondents) (*Withdrawn*)

**1517-97-R:** The United Food and Commercial Workers' International Union, Local 175 & 633 (Applicant) v. Murphy's Potato Chips Inc. and Small Fry Snack Foods Inc. (Respondents) (*Withdrawn*)

**1559-97-R:** United Steelworkers of America (Applicant) v. North American Detergents Inc. and Household Laundry Products Inc. (Respondents) (*Granted*)

**1626-97-R:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Suto Steel Limited, and Ronco Steel Centre Limited (Respondents) (*Withdrawn*)

**1821-97-R:** International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Canyon Electric Company Limited and Dalma Electric Ltd. (Respondents) (*Endorsed Settlement*)

## SALE OF A BUSINESS

**4080-95-R:** International Association of Machinists & Aerospace Workers, Thunder Bay Lodge 1120 (Applicant) v. Badanai Chevrolet Geo Oldsmobile Cadillac Ltd., Kam Motors Limited, Badanai Holdings, Port Arthur Motors Limited (Respondents) v. Joey Fraser and Terry Lunn (Intervener) (*Granted*)

**2115-96-R:** Labourers' International Union of North America, Local 527 (Applicant) v. Vantage Utilities Ltd., Denis Brisbois Holdings Ltd., Denis Brisbois Contractors Ltd., 1091857 Ontario Inc., operating as Orleans Utilities (Respondents) (*Granted*)

**2182-96-R:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Lacon Contracting Inc. and DMD Triangle Lathing and Acoustics Co. Limited and Disal Contracting Ltd. (Respondents) (*Dismissed*)

**2812-96-R:** International Brotherhood of Electrical Workers, Local 804 and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 527 (Applicant) v. Johnson Controls Ltd. and/or Johnson Controls Inc. (Respondents) (*Withdrawn*)

**3341-96-R:** Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 880 (Applicant) v. 1196905 Ontario Ltd. and Windsor Concrete Delivery Ltd. and Windsor Readymixer Leasing Ltd. and Dunn Contracting Ltd. and M.R. Dunn Contractors Ltd. and Advantage Concrete Carriers Ltd. (Respondents) v. International Union of Operating Engineers, Local 793 (Intervener) (*Endorsed Settlement*)

**3515-96-R:** International Union of Bricklayers and Allied Craftsmen Local 1, Ontario (Applicant) v. The Steel Company of Canada, Limited, Stelco Inc. and Lake Erie Steel Company Ltd. (Respondents) (*Granted*)

**3980-96-R:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Henderson Machinery Moving and Installation Limited, 362982 Ontario Limited c.o.b. as Crescent Crane and Float Service, Mississauga Warehousing Ltd., Ace Machinery Movers Ltd., Kaz Driving Services (Respondents) (*Withdrawn*)

**0182-97-R:** International Brotherhood of Painters & Allied Trades, Local Union 200 (Applicant) v. Romita Painters & Decorators Ltd., o/a Villa Painters and Decorators ("Villa") and Canam Interiors Inc. ("Canam") (Respondents) (*Dismissed*)

**0734-97-R:** International Union of Operating Engineers, Local 793 (Applicant) v. C.M. Dipede Group Limited and North Rock Group Ltd. (Respondents) (*Withdrawn*)

**1304-97-R:** Canadian Union of Public Employees and its Local 1045 (Applicant) v. Canadian Waste Services Inc. (Respondent) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Intervener) (*Dismissed*)

**1418-97-R:** United Food & Commercial Workers International Union, Local 175 & 633 (Applicant) v. Impact Cleaning Services Ltd. and Consumers' Gas (Respondents) (*Withdrawn*)

**1517-97-R:** The United Food and Commercial Workers' International Union, Local 175 & 633 (Applicant) v. Murphy's Potato Chips Inc. and Small Fry Snack Foods Inc. (Respondents)

**1559-97-R:** United Steelworkers of America (Applicant) v. North American Detergents Inc. and Household Laundry Products Inc. (Respondents) (*Granted*)

**1626-97-R:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Suto Steel Limited, and Ronco Steel Centre Limited (Respondents) (*Withdrawn*)

**1821-97-R:** International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Canyon Electric Company Limited and Dalma Electric Ltd. (Respondents) (*Endorsed Settlement*)

## UNION SUCCESSOR RIGHTS (SUCCESSOR STATUS)

**1263-97-R:** United Steelworkers of America (Applicant) v. Graham Packaging Canada Limited (Respondent) (*Granted*)

**1264-97-R:** United Steelworkers of America (Applicant) v. National Refractories & Minerals Inc. (Respondent) (*Granted*)

**1265-97-R:** United Steelworkers of America (Applicant) v. Canada Brick (Respondent) (*Granted*)

**1266-97-R:** United Steelworkers of America (Applicant) v. Trulite Industries Ltd. (Respondent) (*Granted*)

**1267-97-R:** United Steelworkers of America (Applicant) v. Libbey Canada Inc. (Respondent) (*Granted*)

**1268-97-R:** United Steelworkers of America (Applicant) v. AFG Industries Ltd. (Respondent) (*Granted*)

**1269-97-R:** United Steelworkers of America (Applicant) v. BMI Refractories Inc. (Respondent) (*Granted*)



**1270-97-R:** United Steelworkers of America (Applicant) v. Libbey Canada Inc. (Office Unit) (Respondent) (*Granted*)

**1271-97-R:** United Steelworkers of America (Applicant) v. SciCan Scientific Ltd. (Respondent) (*Granted*)

**1272-97-R:** United Steelworkers of America (Applicant) v. Guardian Industries Canada Corp. (Fiberglass Division) (Respondent) (*Granted*)

**1353-97-R:** United Steelworkers of America (Applicant) v. Lac Des Iles Mines Ltd. (Respondent) (*Granted*)

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**0417-95-R; 0461-95-R; 2599-95-R; 2600-95-R; 2620-95-R; 2621-95-R; 2752-95-R; 2753-95-R:** Robert Varley (also known as Bob Varley) and Jeff Duquette (Applicants) v. International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario and the International Brotherhood of Electrical Workers Local Union 1739 (Respondents) v. Ed Walker's Electric Ltd., The Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario (Interveners) (*Withdrawn*)

**2781-95-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Labourers' International Union of North America, Local 183 (Respondent) v. Labourers' International Union of North America, Dominion Sheet Metal and Roofing Works (Interveners) (*Withdrawn*)

**2782-95-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Labourers' International Union of North America, Local 183 (Respondent) v. Labourers' International Union of North America (Intervener) (*Withdrawn*)

**2830-95-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Labourers' International Union of North America (Respondent) (*Withdrawn*)

**2832-95-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Labourers' International Union of North America (Respondent) v. Dominion Sheet Metal and Roofing Works (Intervener) (*Withdrawn*)

**3562-95-R:** Collingwood Nursing Home Ltd. (Applicant) v. Health, Office and Professional Employees, a Division of United Food and Commercial Workers International Union, Local 175 (Respondent) (*Dismissed*)

**3865-95-R:** The Board of Management of the Metropolitan Toronto Zoo (Applicant) v. The Canadian Union of Public Employees, Local 1600 (Respondent) (*Granted*)

**4247-95-R:** Labourers' International Union of North America (Applicant) v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Chouinard Bros. Roofing, Donia Aluminum & Roofing Ltd., Burnhamthorpe Roofing Co. Ltd., Jackson Roofing Ltd., Columbus Aluminum & Roofing Ltd., Trudel & Sons Roofing & Sheet Metal Ltd. (Respondents) (*Withdrawn*)

**1189-97-R:** Mauro Viola (Applicant) v. Canadian Union of Operating Engineers and General Workers (Respondent) v. Pack N Rail Ltd. (Intervener)

Unit: "all employees of Pack N Rail Limited employed in the City of Burlington, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (30 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	29
Number of persons who cast ballots	29
Number of ballots marked in favour of respondent	9
Number of ballots marked against respondent	20

**1980-97-R:** David Pizzey and Tanya Homewood (Applicant) v. United Food and Commercial Workers International Union, Local 175 (Respondent) v. Furtney Funeral Homes Limited (Intervener)

Unit: "all employees of Furtney Funeral Homes Limited in the City of London, Ontario save and except managing Directors, persons above the rank of managing Director and employees regularly employed for not more than 24 hours per week" (7 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of ballots marked in favour of respondent	2
Number of ballots marked against respondent	5

**2044-97-R:** Tom Groscki (Applicant) v. Bakery, Confectionery & Tobacco Workers' International Union Local 264 (Respondent) v. Advance Kamak Distribution Centers Ltd. (Intervener) (*Granted*)

**2088-97-R:** Michael W. Carty (Applicant) v. United Food and Commercial Workers International Union, Local 206 (Respondent) v. Bruno's Fine Foods (Etobicoke) Ltd. (Intervener)

Unit: "all employees of Bruno's Fine Foods (Etobicoke) Ltd. located at 4242 Dundas Street West, Etobicoke, save and except Department Heads, persons above the rank of Department Heads and employees who work 24 or less per week" (15 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	2
Number of ballots marked against respondent	6

## COMPLAINTS OF UNFAIR LABOUR PRACTICE

**0324-94-U:** IWA Canada, Local 2693 (Applicant) v. Taiga Trucking Ontario (1980) (Respondent) (*Withdrawn*)

**0449-94-U:** Allison F. Gowling (Applicant) v. The Amalgamated Transit Union Local #107 (Respondent) v. The Hamilton Street Railway Company (Intervener) (*Dismissed*)

**0742-94-U:** IWA Canada, Local 2693 (Applicant) v. Taiga Trucking Ontario (1980) Inc. (Respondent) (*Withdrawn*)

**2760-95-U:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Maple Roofing Ltd., Burnhamthorpe Roofing Co. Ltd., Trudel & Sons Roofing & Sheet Metal Ltd., Jalex Roofing Ltd., Columbus Aluminum & Roofing Ltd., Donia Aluminum & Roofing Ltd., Chouinard Bros. Roofing, Jackson Roofing Ltd., Dell'Angelo Bros. Roofing Limited (Respondents) v. Labourers' International Union of North America (Intervener) (*Withdrawn*)

**2783-95-U:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Labourers' International Union of North America, Local 183, Dominion Sheet Metal and Roofing Works, Chislett Asphalt Roofing Corporation (Respondents) v. Labourers' International Union of North America (Intervener) (*Withdrawn*)

**2831-95-U:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Labourers' International Union of North America, Dominion Sheet Metal and Roofing Works, Chislett Asphalt Roofing Corporation (Respondents) (*Withdrawn*)

**2989-95-U:** Labourers' International Union of North America (Applicant) v. Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Canadian Union of Shinglers and Allied Workers, Metropolitan Toronto Shinglers Association c.o.b. as Canadian Shinglers Association Canadian Shinglers Association, Robert Shewell, Harold Biso, Steven Wolfreys (Respondents) (*Withdrawn*)

**3378-95-U:** Paul Reilly; Ron Goulet (Applicant) v. Dominion Sheet Metal and Roofing Works and L.I.U.N.A. Local 183 (Respondents) (*Withdrawn*)

**3515-95-U:** John Demetriades (Applicant) v. Canadian Union of Public Employees, Local 1144 (Respondent) v. St. Joseph's Health Centre (Intervener) (*Dismissed*)

**4085-95-U:** Vincent Surdyk (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 252 (Respondent) v. Exide Canada Inc. (Intervener) (*Dismissed*)

**4192-95-U:** Canadian Union of Public Employees, Local 256 (Applicant) v. Wellington County Roman Catholic Separate School Board (Respondent) (*Withdrawn*)

**0150-96-U:** Canadian Union of Operating Engineers and General Workers (Applicant) v. Burlington Golf & Country Club Ltd. (Respondent) (*Withdrawn*)

**1815-96-U:** Atlantic Packaging Products Limited (Applicant) v. Graphic Communications International Union, Local 466 (Respondent) (*Withdrawn*)

**2038-96-U:** The Ottawa-Carleton Public Employees Union, Local 503 (Applicant) v. The Corporation of the City of Ottawa (Respondent) (*Dismissed*)

**2123-96-U; 3529-96-U; 4203-96-U:** Susan Wolframe, Carole Fawcett and Ethel Kemp (Applicant) v. Hill's Greenhouses Ltd. (Respondent) (*Withdrawn*)

**2240-96-U:** Mark Morell (Applicant) v. Canadian Security Union (Respondent) (*Dismissed*)

**2419-96-U:** Jennie E. Jacobson (Applicant) v. Robert F. Brown and Windsor Regional Hospital (Respondent) v. Ontario Nurses' Association (Intervener) (*Withdrawn*)

**3301-96-U:** Pritam Singh Badyal (Applicant) v. Hemispheres Int'l Mfg. Co. and United Steelworkers of America, Local 1031 (Respondents) (*Dismissed*)

**3372-96-U:** Effie Tsokanaridis, OPSEU Member, Local 256 (Applicant) v. Ontario Public Service Employees Union, OPSEU Local 256, Joe Savelli, Santo Pasqua, Ed Brennan, Murray Dixon and Beverley Johnson (Respondent) v. Paul Zenchuk (Intervener) (*Withdrawn*)

**3445-96-U:** Beneca Brown (Applicant) v. Canadian Union of Public Employees, Local 149 (Respondent) v. Board of Education for the City of Scarborough (Intervener) (*Dismissed*)

**3814-96-U:** United Food and Commercial Workers Union, Local 175/633 and Catherine Mary Angle (Applicant) v. Miracle Food Mart of Canada, a Division of the Great Atlantic & Pacific Company of Canada Limited (Respondent) (*Dismissed*)

**4084-96-U:** Jeanne Monette-Koutny (Applicant) v. National Canadian Autoworkers Union (CAW) & Local 1285 (Respondent) (*Dismissed*)

**4119-96-U:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada ("O.P.C."), and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada ("U.A.") (Applicant) v. Marsil Mechanical Inc. ("Marsil") and Marco Grande (Respondents) (*Granted*)



**4312-96-U:** Kathleen Barabas (Applicant) v. Local 222 of C.A.W. (Canadian Auto Workers) (Respondent) v. Mackie Automotive Systems (Whitby) Inc. (Intervener) (*Granted*)

**0050-97-U:** Canadian Union of Public Employees Local 778 (Applicant) v. St. Peter's Hospital (Respondent) (*Withdrawn*)

**0241-97-U:** Stanley H. Davis (Applicant) v. Communications Energy and Paperworkers Union of Canada Local 91-0 Toronto Typographical Union (Respondent) v. University of Toronto Press Incorporated (Intervener) (*Dismissed*)

**0458-97-U:** Hanif Assick (Applicant) v. Service Employees' International Union Local 204 (Respondent) (*Withdrawn*)

**0507-97-U:** Barry Olmstead (Applicant) v. Anchor Concrete Products Limited (Respondent) (*Withdrawn*)

**0511-97-U:** Power Workers' Union, CUPE Local 1000 (Applicant) v. Ontario Hydro (Respondent) (*Withdrawn*)

**0658-97-U:** Christian Labour Association of Canada (CLAC) (Applicant) v. Delta Chi Beta Early Childhood Centre (Respondent) (*Withdrawn*)

**0680-97-U; 0681-97-U:** Johny E. Guerrero (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) v. Sentinel Paving & Construction Ltd. (Intervener); Johny E. Guerrero (Applicant) v. Sentinel Paving and Construction Limited (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener) (*Withdrawn*)

**0704-97-U; 0705-97-U:** Gurbaksh Kaur Singh (Applicant) v. Mediterranean Bakery (Respondent); Mohnider Kaur Brar (Applicant) v. Mediterranean Bakery (Respondent) (*Withdrawn*)

**0738-97-U:** Hy & Zel's, The Warehouse Drugstore Ltd. (Applicant) v. United Food and Commercial Workers International Union, Local 175 (Respondent) (*Withdrawn*)

**0748-97-U:** Janet Eta (Applicant) v. Canadian Union of Public Employees (C.U.P.E.) Local 1996 (Respondent) v. Toronto Public Library Board (Intervener) (*Dismissed*)

**0758-97-U; 1508-97-U:** United Food and Commercial Workers International Union, Local 175 & 633 (Applicant) v. Hendriks' Your Independent Grocer (Respondent) v. Wendy Quarrington, Rosemarie Dagenais, Anna Lou King and Karen Flood, on behalf of themselves and on behalf of a Group of Employees of Hendriks' Your Independent Grocer (Intervener); United Food and Commercial Workers International Union, Local 175 & 633 (Applicant) v. Hendriks' Your Independent Grocer and National Grocers Company Limited (Respondents) (*Withdrawn*)

**0776-97-U:** Paul Luck (Applicant) v. Glass, Molders, Pottery, Plastics & Allied Workers International Union (Respondent) v. Accurcast Division of Meridian Operations Inc. (Intervener) (*Withdrawn*)

**0813-97-U:** U-Need-A Cab Limited (Applicant) v. Teamsters Chauffeurs, Warehousemen and Helpers, Local Union No. 141 (Respondent) (*Dismissed*)

**0833-97-U:** Blair Nicholson (Applicant) v. United Steelworkers of America (ABGW Division) and its Local 260G (Respondent) v. Consumers Glass (Intervener) (*Withdrawn*)

**0860-97-U:** Oliver Vivian Rose (Applicant) v. Ontario Produce and Teamsters Union Local 419 (Respondents) (*Withdrawn*)

**0914-97-U:** Kenlyn Samuel (Applicant) v. Hotel Employees Restaurant Employees Union Local 75 (Respondent) v. Best Western Roehampton Hotel & Suites (Intervener) (*Withdrawn*)

**0941-97-U:** The Working Unionized Staff of Trillium Court, Kincardine (Applicant) v. The Christian Labour Association of Canada (Respondent) v. Versa-Care Limited (Operating as: Trillium Court, Kincardine) (Intervener) (*Withdrawn*)

**0949-97-U:** Henderikus (Rick) Wassing (Applicant) v. Teamsters Union Local #647 (Respondent) (*Withdrawn*)

**1001-97-U:** Patricia Shields (Applicant) v. Ontario Public School Teachers' Federation, Renfrew District, Educational Assistants' Branch (Respondent) v. Renfrew County Board of Education (Intervener) (*Withdrawn*)

**1074-97-U:** IBEW Construction Council of Ontario (Applicant) v. Sanjo Electrical Contractors Ltd. (Respondent) (*Withdrawn*)

**1178-97-U:** Mohamed T. Unoos (Applicant) v. Delta Chelsea Inn & Hotel Employees Restaurant Employees Local 75 (Respondents) (*Withdrawn*)

**1181-97-U:** Ontario Nurses' Association (Applicant) v. Meadowcroft Holdings Inc. c.o.b. as Meadowcroft Health Care Management Group, Meadowcroft Management Holdings Inc., Meadowcroft Group Limited c.o.b. as Meadowcroft Health Care Management Group and c.o.b. as Meadowcroft General Partnership, 1166067 Ontario Limited, George Kuhl, 1107989 Ontario Limited, c.o.b. as Nutra 2000, and Livingston Lodge (Respondents) (*Withdrawn*)

**1228-97-U; 1229-97-U:** Canadian Health Care Workers (C.H.C.W.) (Applicant) v. London & District Service Workers' Union, Local 220 and Grand River Hospital Corporation (Respondents) (*Dismissed*)

**1293-97-U:** Bill Pascuzzo (Applicant) v. Merrick Homes Inc. (Respondent) (*Withdrawn*)

**1296-97-U:** James Lawson (Applicant) v. United Steelworkers of America, Local Union 5296 Security Officers and Metropol Security Company A Division of Barnes Security Services Ltd. (Respondents) (*Withdrawn*)

**1361-97-U:** Labourers' International Union of North America, Local 1267 (Applicant) v. Canada Waste Services Inc., and Chris Rotter (Respondent) (*Withdrawn*)

**1395-97-U:** George Hines (Applicant) v. Canadian Union of Public Employees, Local 79 (Respondent) (*Dismissed*)

**1402-97-U:** Ramji Firoz (Applicant) v. Sheraton Centre Hotel (Respondent) (*Dismissed*)

**1417-97-U:** United Food and Commercial Workers International Union, Local 175 & 633 (Applicant) v. Impact Cleaning Services Ltd. and Consumers' Gas (Respondents) (*Withdrawn*)

**1447-97-U:** Canadian Union of Operating Engineers and General Workers (Applicant) v. Daysi Industries Inc. (Respondent) (*Withdrawn*)

**1536-97-U:** International Association of Machinists and Aerospace Workers, Local 235 (Applicant) v. Governing Council of the University of Toronto (Respondent) (*Withdrawn*)

**1581-97-U:** Kenneth John Scott (Applicant) v. Aluminum, Brick and Glass Workers Collingwood Local 252G which has since merged with United Steel Workers of America (Respondent) v. Libbey Owens Ford Glass (Intervener) (*Withdrawn*)

**1583-97-U:** International Association of Machinists and Aerospace Workers (Applicant) v. H & H Manufacturing Limited (Respondent) (*Withdrawn*)

**1640-97-U:** I.W.A. Canada Local 2693 (Applicant) v. Industrial Hardwood Products Ltd. (Respondent) (*Granted*)

**1713-97-U:** United Steelworkers of America (Applicant) v. L.E. Taylor Associates Ltd. (Respondent) (*Withdrawn*)

**1716-97-U:** International Brotherhood of Electrical Workers, Construction Council of Ontario (Applicant) v. Fred Geissler Electrical Limited, Human Resources Development Canada, Oshawa Canada Employment Centre (Respondents) (*Endorsed Settlement*)

**1725-97-U:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Victorian Order of Nurses - Sudbury Branch (Respondent) (*Withdrawn*)

**1781-97-U:** Office & Professional Employees International Union (Applicant) v. Home Care Program for Metropolitan Toronto (Respondent) (*Withdrawn*)

**1783-97-U:** I.W.A. Canada Local 2693 (Applicant) v. Industrial Hardwood Products Ltd. (Respondent) (*Granted*)

**1793-97-U:** United Food and Commercial Workers Union, Local 1977 (Applicant) v. White Rose Crafts and Nursery Sales Limited (Respondent) (*Withdrawn*)

**1806-97-U:** I.W.A. Canada Local 2693 (Applicant) v. Industrial Hardwood Products Ltd. (Respondent) (*Granted*)

**1866-97-U:** Wayne MacDonald and William Trost (Applicant) v. Service Employees International Union Local 220 (Respondent) (*Withdrawn*)

**1881-97-U:** Glass, Molders, Pottery, Plastics & Allied Workers International Union (on behalf of all Employees listed in Schedule "B") (Applicant) v. Stadco Polyproducts Inc. (Respondent) (*Withdrawn*)

**1906-97-U:** Teamsters Local Union No. 419 (Applicant) v. Martha's Garden Inc. (Respondent) (*Withdrawn*)

**1925-97-U:** Sean Donovan et al (Applicant) v. William Neilson Ltd. and Teamsters Local 647 (Respondents) (*Dismissed*)

**1934-97-U:** Service Employees International Union (Applicant) v. Flamboro Downs Holdings Limited (Respondent) (*Withdrawn*)

**2007-97-U:** John Recchia (Applicant) v. Canadian Union Public Employees Local 185 (Respondent) (*Dismissed*)

**2011-97-U:** United Brotherhood of Carpenters and Joiners of America, Local 3054 (Applicant) v. La Co-Operative De Pointe Aux Roches (Respondent) (*Withdrawn*)

**2039-97-U:** Carpenters & Allied Workers, Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Iervasi Roofing (Respondent) (*Terminated*)

**2059-97-U:** Local 834 International Association of Bridge, Structural and Ornamental Iron Workers affiliated with A.F.L.-C.I.O. (Applicant) v. 1095766 Ontario Limited o/a Container Design Services (Respondent) (*Withdrawn*)

**2218-97-U:** Keith Williams (Applicant) v. Management Board Secretariat, Ontario Public Service Employees Union (Respondents) (*Dismissed*)

**2228-97-U:** Farouk Dinally (Applicant) v. Toronto Transit Commission (Respondent) (*Dismissed*)

**2341-97-U:** Joyce Vaillancourt (Applicant) v. CUPE Union Local 1320 (Respondent) (*Dismissed*)

**2378-97-U:** Marty McCormick (Applicant) v. D.D.M. Plastics (Respondent) (*Dismissed*)

## APPLICATION FOR INTERIM ORDER

**1584-97-M:** International Association of Machinists and Aerospace Workers (Applicant) v. H & H Manufacturing Limited (Respondent) (*Withdrawn*)



## APPLICATIONS FOR CONSENT TO PROSECUTE

**2904-96-U:** Retail Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America and Local 1688, the Ontario Taxi Union (Applicants) v. Paul Gleitman, Hillel Gudes, Chris Chronopoulos, Nabil Nassar, Jamil Rawadat and Associated Toronto Taxicab Co-operative Limited (Respondents) (*Withdrawn*)

## APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

**1711-97-M:** William Neilson Ltd. (Applicant) v. The Milk and Bread Drivers, Dairy Employees, Caterers, and Allied Employees, Local Union 647 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent) v. Group of Employees (Objectors) (*Granted*)

## APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

**2595-93-M:** The Corporation of the Town of Deep River (Applicant) v. Canadian Union of Public Employees, Local 740 (Respondent) (*Withdrawn*)

## COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

**1054-94-OH:** Dave Hughes (Applicant) v. John Bakker and General Motors of Canada Limited (Respondents) (*Withdrawn*)

**3136-95-OH:** G. Louis Durocher, CAW Local 1973 (Applicant) v. Diane Tellier and General Motors of Canada Limited (Respondent) (*Dismissed*)

**4149-96-OH:** Lloyd Fournier (Applicant) v. Mold-Masters Limited (Respondent) (*Dismissed*)

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# **ONTARIO LABOUR RELATIONS BOARD REPORTS**

**November/December 1997**



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# ONTARIO LABOUR RELATIONS BOARD REPORTS

A Bimonthly Series of Decisions from the  
Ontario Labour Relations Board

Cited [1997] OLRB REP. NOVEMBER/DECEMBER

EDITOR: RON LEBI

Selected decisions of particular reference value are  
also reported in *Canadian Labour Relations Boards  
Reports*, Butterworth & Co., Toronto.

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Employer seeking reconsideration of decision on grounds of reasonable apprehension of bias - Employer submitting that apprehension of bias arising because on or about the date of the Board's earlier decision, vice-chair of the panel entered into a retainer agreement with the Canadian Air Line Pilots Association (CALPA) - Employer also relying on fact that vice-chair had discussions with CALPA regarding the retainer prior to date of Board's decision - Board not agreeing that circumstances giving rise to reasonable apprehension of bias - Reconsideration request denied - Application for judicial review dismissed by Divisional Court

DOVER CORPORATION (CANADA) LIMITED INDUSTRIAL DIVISION; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA), BRIAN KELLER, KAREN BRENNAN AND LARRY BERTUZZI, AND THE OLRB .....

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NATIVE CHILD AND FAMILY SERVICES OF TORONTO; RE CUPE AND ITS LOCAL 3875 .....

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Remedies - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Interference in Trade Unions - Intimidation and Coercion - Unfair Labour Practice - Employer threatening to shut plant and move to United States if union certified - Board certifying union under section 11 of the Act - Board directing reinstatement of inside union organizer who resigned position because he thought that he would be dismissed following union's loss in representation vote

TILL-FAB LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS' UNION OF CANADA (CAW) .....

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Remedies - Discharge - Discharge for Union Activity - Unfair Labour Practice - Board concluding that employer's decision to contract out certain maintenance work tainted by anti-union animus - Contracting out leading to termination of two maintenance workers - Board directing employer to reinstate terminated employees, to compensate them for lost income, and to post certain notices in the workplace

DA VINCI CENTRE, SOCIETA ITALIANA DI BENEVOLENZA PRINCIPE DI PIEMONTE C.O.B. AS THE; RE HOSPITALITY, COMMERCIAL AND SERVICE EMPLOYEES UNION, LOCAL 73 CHARTERED BY H.E.R.E. ....

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DOVER CORPORATION (CANADA) LIMITED INDUSTRIAL DIVISION; RE NATIONAL  
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**4006-96-R** D. Vandermeer, C. Thain, and a Group of Employees, Applicants v. United Food and Commercial Workers International Union, Locals 175 and 633, Responding Party v. Banlake Associates Limited c.o.b. as **Bancroft I.G.A.**, Intervenor

**Adjournment - Practice and Procedure - Reconsideration - Termination - Board allowing contested adjournment request with direction that union pay reasonable costs of the day to the other two parties - Board finding claims of \$1750 by the applicant and \$750 by the intervenor to be reasonable and directing payment by next day of hearing - Union seeking reconsideration on basis that amounts claimed by parties unreasonable and that time frame for payment too short - Reconsideration request denied**

**BEFORE:** *Gail Misra*, Vice-Chair, and Board Members *J. A. Ronson* and *H. Peacock*.

**APPEARANCES:** *Bruce Seigny*, *Dirk Vandermeer* and *Cindy Thain* on behalf of the Group of Employees of Banlake Associates Ltd. c.o.b. as Bancroft I.G.A.; *David M. Chondon* and *Bud Schramm* for Bancroft I.G.A.; *Kelvin Kucey*, *Ovila Dagenais* and *Bill Cooper* for UFCW.

**DECISION OF THE BOARD;** December 23, 1997

1. This is an application for the termination of bargaining rights, filed pursuant to section 63 of the *Labour Relations Act, 1995*.
2. Hearings began in March, 1997, and continued more substantively on August 25, 1997. In September, although two dates had been set for hearing, as counsel for the responding party (the "union") needed an adjournment for personal reasons, the parties consented to the adjournment of two days in that month. The next days of hearing were to be held on November 5, 7, 25, and December 12, 1997.
3. On November 5, 1997 the union finished calling its evidence at 3 p.m. and indicated that its next witness, Mr. John Fuller, was not available to start his evidence at that time. The Board accommodated the union's request to adjourn early. Mr. Kucey indicated he would have Mr. Fuller available to testify on November 7, 1997, and the Board directed that the hearing would begin at 9 a.m. in order to attempt to make up for hearing time lost on November 5, 1997.
4. The Registrar of the Board was informed on November 6, 1997 that Mr. Fuller was not going to be available to attend at the hearing, and Mr. Fuller requested an adjournment for the November 7th day of hearing. As the other parties did not consent to the adjournment, the hearing proceeded as scheduled.
5. At the outset of the hearing on November 7, 1997, Mr. Kucey requested that the Board grant an adjournment as Mr. Fuller could not attend. Mr. Fuller was apparently at a conference in Kingston, which he was chairing, and which he had been organizing for one year. The union had not brought any other witnesses to give evidence either, although it had earlier informed the Board that it had one other witness to call besides Mr. Fuller. The union informed the Board that it was seeking an adjournment, that it was in the discretion of the Board to grant such an adjournment, and that the union was prepared to accept any conditions the Board may impose. The union undertook to have its witnesses available for the hearing on November 25, 1997, and indicated that it could finish its case on the next hearing day.
6. After hearing the submissions of the parties with respect to the adjournment request, the majority of the Board ruled orally (with Mr. Ronson dissenting) that the adjournment was granted, with

the direction that the union pay the reasonable costs of the day to the other two parties. The Board noted counsel for the union's undertaking that the union only had two more witnesses to call in its case.

7. The parties could not agree on what the reasonable costs of the day were, and asked the panel to hear submissions in that regard. Having heard submissions, the Board directed, that as a condition of the union's adjournment it pay to the applicants the amount of \$1,750 and to the intervenor the amount of \$750, and that such payments were to be made by the next day of hearing. The Board was satisfied that the costs which were being claimed were reasonable in all of the circumstances.

8. Prior to the hearing to be held on November 25, 1997, Mr. Fuller informed the Board that he had medical problems, and that as a consequence, he had been advised not to travel from Ottawa to Toronto. The Board was provided with a medical certificate to confirm Mr. Fuller's inability to attend at the hearing. In the circumstances, the Board granted the union an adjournment for that date.

9. At the hearing on December 12, 1997, the applicants and the intervenor informed the Board that the union had failed to pay the amounts owing, and further, had failed to pay witnesses summoned by the union their travel costs, even though the witnesses had had to give evidence at the August days of hearing. At that juncture the union indicated it intended to make a motion seeking reconsideration of the Board's decision of November 7, 1997 granting the adjournment on condition of payment of the other parties' reasonable costs. The Board invited the union to make its reconsideration motion.

10. The union indicated that it was seeking reconsideration on the basis that the amounts the parties were claiming were unreasonable, and that the time frame in which the payments were to be made was too short. It was the union's position that Mr. Fuller had called the parties prior to the hearing day, had requested consent to the adjournment, and that had the parties given their consent, no hearing would have had to be convened. The union specifically indicated it was not questioning the Board's jurisdiction to make the award it had made, but was asking that the Board at least reconsider the amount to be paid to the other parties.

11. Having heard the submissions of the other parties, the Board ruled orally that it would not reconsider its earlier decision. Our reasons for that ruling follow.

12. The union had asked for a consent adjournment of the November 7, 1997 hearing date, and had been unable to get consent. In the normal course it would have to proceed with the hearing on the date set by the Board, and on November 7, 1997 that is what ensued. That is the Board's normal practice, well known to all parties who appear before it, and so there was nothing unusual about the applicants and the intervenor appearing on November 7th prepared to proceed. The union, at that juncture, had brought none of its witnesses, made a motion before the Board for an adjournment, indicated it was prepared to accept any terms imposed by the Board to get the adjournment, and was successful in its motion. The majority of the Board had been satisfied that an adjournment could be granted on conditions.

13. None of the union's submissions in the reconsideration application were arguments which were not available to it or were not capable of being made on November 7, 1997. The Board had considered all of the submissions before it prior to accommodating the union's request for an adjournment, and there was no basis upon which the Board saw any reason to reconsider its original decision. It is noteworthy, and troubling to the Board, that although the union believed it did not have sufficient time to comply with the November 7th decision by November 25th, it has still failed to comply, more than one month later.

14. Ironically, the Board, on December 12, 1997, was again asked by the union to adjourn part of the day as Mr. Fuller was still unavailable to attend at the hearing to give evidence. Over the



objections of the other parties, and in light of the new medical evidence presented to the Board, an adjournment was granted. However, the Board ruled that the next days of hearing would be on March 2 and 3, 1998, and that if Mr. Fuller is still unavailable at that time, no further adjournments will be granted to accommodate Mr. Fuller's attendance.

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**1981-97-JD** International Union of Operating Engineers, Local 793, Applicant v. **Bennett & Wright Group** and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 508, Responding Parties

**Construction Industry - Jurisdictional Dispute - Board holding that operation of eight ton Pitman type boom truck crane in Board Area #21 is work of the Operating Engineers**

**BEFORE:** *Robert Herman*, Alternate Chair, and Board Members *J. G. Knight* and *G. McMenemy*.

**APPEARANCES:** *James K.A. Hayes*, *David W.T. Matheson*, *Robert Gibson*, *Ed Kaplanis* and *John Anderson* for the applicant; *Pamela Yudcovitch* for Bennett & Wright Group; *Laurence C. Arnold*, *C.D. von Buchwald* and *Bob Vosper* for United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 508.

**DECISION OF THE BOARD;** December 17, 1997

1. The name: "Bennett & Wright Limited" in the title of proceedings is amended to read: "Bennett & Wright Group".
2. This is a complaint concerning an assignment of work in the construction industry.
3. The work in dispute is all work in connection with the operation of an eight ton Pitman type boom truck crane at the Algoma Steel plant in Sault. Ste. Marie, in Board Area #21, which is being used in connection with the construction of a new Direct Strip Production Complex. The eight ton crane is being utilized for handling, off-loading, and moving a wide variety of mechanical equipment and piping materials.
4. The responding party, Bennett & Wright, was retained as the mechanical contractor for the project, and it subcontracted certain mechanical and piping work to R.F. Contracting. R.F. Contracting owns two eight ton boom trucks, one of which is a Pitman type boom truck. It has owned the two boom trucks since approximately 1995.
5. Bennett & Wright is bound to provincial agreements with both the United Association (also referred to as the "U.A.") and the International Union of Operating Engineers, Local 793 ("Operating Engineers"). Pursuant to its agreement with the Operating Engineers, Bennett & Wright is required to assign work covered by that agreement to members of the Operating Engineers, or to subcontractors in contractual relations with the Operating Engineers.
6. The subcontractor, R.F. Contracting, is bound to an agreement only with the United Association, including Local 508, but has no collective bargaining relationship with the Operating Engineers. At all times, R.F. Contracting used a member of the United Association to operate the boom truck.

7. In making the assignment, Bennett & Wright assigned boom trucks ten tons and over to the Operating Engineers, and those eight tons and under to the particular craft. For the mechanical work subcontracted to R.F. Contracting, this assignment gave the operation of its eight ton boom truck to the U.A. The Operating Engineers challenge this assignment.

8. The U.A. and Bennett & Wright assert three grounds for justifying the assignment to the United Association. Their main argument is that an eight ton Pitman type boom truck, when operated by a single trade, is a tool of that trade, and as such the work here properly belongs to the U.A. Second, and in any event, they assert that the use of the boom truck was sporadic or intermittent, and did not amount to a continuous or full-time operation of the truck. Accordingly, they submit, for reasons of economy and efficiency, it was appropriate that the work was assigned to the U.A. Third, the practice of the employer, R.F. Contracting, has been to have its eight ton boom trucks operated by a member of the U.A. This practice includes projects in Board Area #21. The U.A. and Bennett & Wright assert that the Board ought not to overturn an assignment consistent with this practice.

9. As with many jurisdictional disputes, it is particularly useful to look at the area practice, here the practice in Board Area #21. The filed material demonstrates that, within Board Area #21, there has been no distinction made by employers in assigning boom type cranes (or other types of cranes, for that matter) because the cranes are eight tons or less, or over eight tons. Similarly, there has been no distinction made in this Board area between the use of cranes on a full-time continuous basis, or their anticipated use on a sporadic and/or intermittent basis. Nor have assignments in Board Area #21 sought to differentiate depending on whether it is expected that the crane will be used for multi-trade or single trade purposes.

10. With the exception of the practice of R.F. Contracting itself, all the area practice in Board Area #21 supports the assignment of the work to Operating Engineers, and not to members of the particular craft. A meaningful number of contractors engaged in projects in the Sault Ste. Marie area have assigned work involving the operation of cranes, and regardless of size, have made these assignments to Operating Engineers. This has been true for a significant number of years.

11. R.F. Contracting has not made similar assignments. It has on numerous occasions since 1995, when it first owned the boom truck cranes, been engaged in projects in Board Area #21, and on each of those occasions it has used a member of the U.A. to operate its eight ton Pitman type boom crane. This practice is not of particular assistance, however, in determining how the work in dispute ought to be assigned in Board Area #21, since the assignments made by R.F. Contracting did not occur where there was a contest between trades. This is not to suggest that R.F. Contracting did anything improper or inappropriate in assigning the work to a member of its existing work force, covered by a collective agreement with the U.A. It is only to indicate the limited role of such practice in determining the correct assignment by Bennett & Wright.

12. Bennett & Wright was not in the same position as R.F. Contracting. Bennett & Wright has collective agreement obligations with both unions. The collective agreement with the Operating Engineers has a clause which specifically identifies "Pitman type cranes under 10 ton capacity" as belonging to members of the Operating Engineers. In contrast, the collective agreement with the United Association covers the "unloading, distribution and hoisting of all equipment and piping for plumbing and pipe fitting systems". While these words can encompass Pitman type boom cranes under eight tons, this is a less specific description.

13. When Bennett & Wright made the assignment, it did so in a context where all previous assignments in the Board area had been made to contractors that utilized members of the Operating Engineers for crane operations (except where the work had been subcontracted to R.F. Contracting). The U.A. asserted that many of the prior assignments had involved the rental of cranes, and it makes

the claim where eight ton boom cranes were rented. We do not find this distinction to be of significance here.

14. There thus appear to be three factors supporting an assignment of this work to Operating Engineers. First, and as noted, the area practice is overwhelmingly in favour of such assignments being made to the Operating Engineers. Second, the designation issued by the Minister for Operating Engineers specifically describes the work of Operating Engineers as including the "operation of cranes". The designation with respect to the United Association does not specifically touch upon the operation of cranes. Third, as noted, the collective agreements of the two unions favour the assignment of the work to the Operating Engineers. We consider area practice to be the most significant factor at play here.

15. We therefore conclude that the operation of an eight ton Pitman type boom crane is in Board Area #21 the work of the Operating Engineers. There appears no dispute that cranes with a capacity greater than ten tons are similarly the work of the Operating Engineers.

16. There will still be circumstances where the factors of economy and efficiency dictate that the operation of an eight ton boom type crane should be assigned to members of a particular craft. Occasions will arise when the anticipated use of the crane, at the time the assignment is made, is such that the employer reasonably concludes that the crane will only be needed on a sporadic and/or intermittent basis. Where it is anticipated that the crane will be needed only on a sporadic basis, an assignment to the craft may be justified. This is likely to occur where the crane is being operated by a single trade, since in a multi-trade context it is more likely that the crane will be needed more regularly. In these circumstances, it makes little economic sense to require an employer to use an operating engineer, who will then be required to stand idle for a significant portion of the working day. It will make more sense to assign the operation of the eight ton crane to the trade in question, with the result that the operator can work with the tools of the trade when the crane is not needed. The Operating Engineers have historically recognized such circumstances, and have not asserted claims in Board Area #21 where the amount of work involved by the operator of an eight ton crane was so limited or irregular that it made economic sense for the employer to be able to use a member of the particular craft to operate a crane of this type and capacity.

17. While the material before the Board initially seemed to suggest that the operation of the crane at issue fell within this category (its use was sufficiently sporadic as to justify an assignment to a member of the U.A.), after hearing the parties submissions, we have concluded otherwise. The Board is satisfied that the eight ton boom type crane was operated regularly by R.F. Contracting, albeit not continuously. While there may have been days when the crane was not operated at all, on average it appears as if it was operated for a meaningful number of hours on a typical or average day. And while it also appears as if the member of the U.A. who operated the crane worked as a pipefitter some of the time the crane was idle, it appears as if his work at the trade was limited.

18. We do not propose to interfere with the assignment made by Bennett & Wright. The work has been completed, and there is no actual work which could now be re-directed to the Operating Engineers. Even if there were, we would not do so. R.F. Contracting does not have a collective agreement with the Operating Engineers, and it remains free to assign this work to members of the United Association, if it so chooses. Since it was R.F. Contracting, as the subcontractor, which made the actual assignment of work, we would not be disposed to interfere with that assignment.

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**1052-97-U, 1053-97-U** Hospitality, Commercial and Service Employees Union, Local 73 chartered by Hotel Employees Restaurant Employees International Union, Applicant v. Societa Italiana Di Benevolenza Principe Di Piemonte c.o.b. as the **Da Vinci Centre**, Responding Party

**Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board concluding that employer's decision to contract out certain maintenance work tainted by anti-union animus - Contracting out leading to termination of two maintenance workers - Board directing employer to reinstate terminated employees, to compensate them for lost income, and to post certain notices in the workplace**

**BEFORE:** *Laura Trachuk*, Vice-Chair, and Board Members *J. A. Rundle* and *D. A. Patterson*.

**APPEARANCES:** *Denis Ellickson*, *Frances Dubois*, *Jody Aiken* and *Kris Mayes* for the applicant; *Fred Bickford*, *Renato Rigato* and *Rick Armour* for the responding party.

**DECISION OF VICE-CHAIR LAURA TRACHUK, AND BOARD MEMBER D. A. PATTERSON;** November 21, 1997

1. Board File No. 1052-97-U is an application under section 96 of the *Labour Relations Act, 1995* alleging that the responding party (referred to as the "Centre") has not complied with a settlement resulting from a previous application to the Board. During the course of the hearing, the applicant (referred to as the "union") indicated that it would not be proceeding with that application and it is hereby withdrawn with leave of the Board.

2. Board File No. 1053-97-U is an application under section 96 of the Act alleging that the Centre committed a number of unfair labour practices when it reduced the hours of, and then terminated the employment of, two maintenance employees on June 18, 1997.

### **Preliminary Matters**

3. In response to a number of preliminary motions submitted by the responding party, the Board unanimously made the following oral ruling denying the motions but limiting the scope of the hearing:

The Board has carefully considered the submissions of the parties.

The Board finds that the applicant has made out a *prima facie* case for a violation of the Act in Board File No. 1053-97-U. That case can be described as, and is limited to, the following: whether or not the two maintenance employees were laid off because, or partly because, the union was claiming that they were in the bargaining unit.

The Board need not decide and will not decide whether or not the two individuals were regularly employed for more than twenty-four hours per week and were therefore in the bargaining unit as that is a matter for a Board of Arbitration. The Board will therefore not hear any evidence with respect to that issue.

The Board has also decided that in these circumstances it need not hear the facts which gave rise to the settlement which is the basis for Board File No. 1052-97-U. It is unclear to the Board whether or not the union is still seeking to proceed with the claim that that settlement has not been complied with and the union should so advise us.

In the circumstances of this case the Board considers it appropriate that the employer proceed first, in accordance with its onus.

4. The Board indicated at the end of the above ruling that reasons for the ruling might be included in its final decision. The Board considers it appropriate to provide brief reasons as to why it found that the union had made out a *prima facie* case for a breach of the Act but also found it appropriate to defer the determination as to whether or not the maintenance employees in question were actually in the bargaining unit to a Board of Arbitration.

5. The Centre argued that the two employees were not in the bargaining unit as they did not regularly work more than twenty-four hours per week, there was no wage rate for them in the collective agreement, and the union had never claimed them before. According to the Centre, since they were not in the bargaining unit the union could not file a complaint on their behalf under the *Labour Relations Act, 1995*.

6. The application relies on various sections of the Act which the applicant claims have been violated. Sections 70, 72 and 76 of the Act state as follows:

70. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

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72. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
- (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

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76. No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

7. Sections 72 and 76 above refer to any "person" and are therefore specifically not limited to the protection of individuals who have been found to be members of certified bargaining units. The Board has found on numerous occasions that these sections are not so restricted. In this case the collective agreement applies to anyone working regularly more than twenty-four hours per week. It must be open then, for the union to claim that an individual is working more than twenty-four hours per week without exposing that person to a reprisal for which no remedy is available unless the union is correct. Furthermore, the union has its own interest in the ability to enforce its collective agreement

without fear of reprisal against itself or any individuals it purports to represent. Section 70 protects the union against such employer interference. Therefore, the Board found that the union had made out a *prima facie* case for a violation of the Act and that the Board need not find that the two employees were actually within the bargaining unit to make that determination. The decision as to whether the employees were regularly working more than twenty-four hours per week is a matter arising under the collective agreement and is therefore a matter which should be heard by a Board of Arbitration.

### Facts

8. The relevant facts giving rise to the application in Board File No. 1053-97-U are not in dispute. The parties do have a dispute about the Centre's motivation for the terminations and some of the facts it relies upon to support its claim that it had no anti-union animus.

9. The responding party is a non-profit Italian cultural and social club which is also involved in charitable activities. It runs a facility, the Da Vinci Centre, which contains a number of banquet and meeting rooms and a sports bar. It has had a collective bargaining relationship with the union since approximately 1975. The recognition clause in the collective agreement states as follows:

#### ARTICLE 2 - RECOGNITION:

2.01 — The Employer recognizes the union as the sole and exclusive bargaining agent of all Employees of the Employer employed at the Da Vinci Centre in Thunder Bay, Ontario, save and except Manager and persons above the rank of Manager, Confidential Secretary and person regularly employed for not more than twenty-four (24) hours per week. The Union recognizes a non-union supervisor or department head in each department who shall give direction to Employees.

10. The employees covered by the recognition clause have historically been full-time bartenders and serving staff. The union did not claim that any other employees worked more than twenty-four hours per week and were therefore covered by the collective agreement until after it was placed under trusteeship in 1995. Since then it has made the claim on behalf of two serving staff and the two maintenance/cleaning employees, Mr. Kris Mayes and Mr. Jody Aiken, whose terminations are the subject of this application.

11. On May 12, 1997, the union's business representative, Mr. Ed Goralski, wrote to the Centre's manager, Mr. Rick Armour, and advised him that the union was taking the position that the two maintenance employees worked more than twenty-four hours per week and were therefore covered by the collective agreement. Mr. Goralski requested that the Centre start deducting union dues from their wages and meet to negotiate wages for their classification.

12. Mr. Goralski subsequently contacted Mr. Armour by telephone with respect to this issue and was advised that the Centre did not want to deal with this matter until a similar outstanding application with respect to a server/bar-tender was resolved. Mr. Goralski apparently acquiesced.

13. The parties entered a settlement with respect to the earlier application around the end of May. On June 4, 1997, Mr. Goralski wrote another letter to Mr. Armour asking when the union could expect a response to its May 12 letter. This letter was followed by telephone call from Mr. Goralski to Mr. Armour which resulted in Mr. Goralski swearing at Mr. Armour and Mr. Armour hanging up on him. On June 20, 1997 Mr. Armour wrote to Mr. Goralski and advised him that the Centre did not consider the two individuals to be covered by the collective agreement and that their employment was being terminated since the Centre had decided to contract out their work. The union then filed this application.



14. One of the union's witnesses, Ms. Frances DuBois, testified that at the commencement of the last round of collective agreement negotiations Mr. Goralski asked whether any other employees regularly worked more than twenty-four hours per week and that the Centre replied in the negative. One of the Centre's witnesses testified that he could not recall such a question being asked and the other witness denied that it was asked. There is no wage rate for a maintenance employee in the collective agreement and maintenance employees have never been considered to be covered by the agreement in the past.

15. In April, 1997 the Centre contracted/hired another cleaning/maintenance person, Mr. Manuel Munoz. Mr. Munoz had worked for the Centre the previous year on what it believed to be a contract basis and had "resigned". Mr. Munoz "resigned" again in July, 1997. The Centre also has a part-time employee, Mr. Jeff Clawse, who performs cleaning and maintenance work on weekends. Mr. Munoz and Mr. Clawse continued to work at the Centre after Mr. Mayes and Mr. Aiken were terminated.

### The Centre's Evidence

16. The Centre claims that it contracted out the maintenance/cleaning work and terminated the employment of Mr. Mayes and Mr. Aiken for economic reasons and not because the union was trying to include them as part of the bargaining unit. The Centre claims that it had already decided to contract out the work before it received the union's May 12 letter. It called two witnesses to support this position.

17. Mr. Renato Rigato is a member of the Society and has held many executive positions, including president and recording secretary. He testified that the Centre had contracted for maintenance/cleaning services and various other maintenance services in the past. In 1993 the executive decided that it would use its own employees for the maintenance/cleaning work because it had some concerns about the honesty of the personnel supplied by the contracting service. Some of the contracts that were introduced through Mr. Rigato look very much like employment contracts, however, it is apparent that the Centre distinguishes between these arrangements and those it recognizes as employment relationships.

18. Mr. Rigato testified that the Society and the Centre had been losing money for a number of years and in January, 1997 decided to consider a number of initiatives for saving money including contracting out the cleaning services. The notes of the January meeting of the management committee do indicate that the possibility of contracting out cleaning services was to be explored. In February, the Centre's accountant attended the meeting of the management committee and advised it that the Centre needed to find ways to save money and to generate more revenue. By that meeting the Centre had received tenders from three cleaning companies. The tenders varied from quotes of \$1,200.00 per month to \$3,000.00 per month.

19. Mr. Rigato testified that the Centre had not definitely decided to contract out the cleaning services in February as it wanted to wait and see if the financial situation would improve. In cross-examination he also testified that the Centre had not yet decided that it would save money by contracting out this service. He testified that the decision to contract out the work was made either at the April, 1997 management committee meeting when it found that the Centre was still losing money or in a conversation he had in April with the General Manager, Mr. Armour. The minutes from the April management committee meeting do not make any reference to contracting out cleaning services. It was brought to the witness's attention in cross-examination that the financial reports produced by the Centre indicate that its losses for March and April were lower than they had been for some time, indeed the Centre showed a profit in April for the first time in many months.

20. Mr. Rigato testified that although the decision to contract out the maintenance/cleaning service to Wizard Cleaning was made in April, 1997 the Centre decided not to begin the contract until

June because its slow period does not begin until May or June. The Centre did not inform the two employees affected that it had made the decision and that they would therefore be terminated until June 18, 1997. No explanation was provided to the Board for the decision to delay this information. The contract between the Centre and Wizard Cleaning which was submitted to the Board is undated but indicates that it is to commence on June 19, 1997. Mr. Rigato also testified that in April the Centre re-hired Mr. Manuel Munoz to “fill a void” because it needed someone to work extra hours.

21. Mr. Rigato testified that he believed that the Centre will save \$300.00 per month on labour by contracting out the cleaning. He could not explain which calculation was used to come to that conclusion. He also testified that the savings in wages was not the only reason to contract out the work. He explained that by contracting out the cleaning work, the Centre made it possible for its maintenance supervisor to do more hands-on cleaning as he did not have to spend time supervising the two cleaning employees and the contracting company would supply its own cleaning equipment. He also testified that the Centre reduced the hours the bar was open in the month of March to save money but went back to the regular opening times in April.

22. The Centre’s second witness, Mr. Armour, was the manager of the Centre from 1991 until July, 1995 and then from June, 1996 to the present. Mr. Armour has worked in the hospitality industry for many years. He has also generally worked in a unionized environment. Mr. Mayes, Mr. Aiken, Mr. Munoz, Mr. Clawse and the maintenance manager were already employed when Mr. Armour returned in June, 1996. He testified that there was nothing wrong with their work. He attended the management committee meetings in January and February, 1997 when the possibility of contracting out the cleaning work and other cost saving measures was discussed. He explained some of the cost saving and revenue generating measures that the Centre undertook. He also testified that the committee had calculated that the Centre could save \$300.00 per month by contracting out the cleaning to Wizard. This calculation was based on paying Mr. Mayes and Mr. Aiken \$7.00 per hour (rounding up from their real wages) for twenty-four hours per week. He testified that the final decision to contract out the cleaning work to Wizard was made in February, 1997. Subsequent to that date there were only a few details to work out with the contractor. He claimed that the decision was reconfirmed in the April, 1997 management committee meeting. He testified however, that it was decided not to start the contract until June, 1997 when the Centre started its slow period. He also testified that the contract itself was not signed until June, 1997. He also confirmed that he did not inform the two affected employees of the decision to contract out the work until June 18, one day before the new contract was to start.

23. Mr. Armour was also cross-examined about the management committee’s determination that contracting out the work of the cleaning employees would save the Centre money. It was pointed out to him that by his calculation, the Centre was only saving \$100.00 per month by contracting out the cleaning to the company it chose. The other companies which provided tenders would have cost more than using the Centre’s own employees. He testified that there were other cost savings, such as the provision of cleaning equipment by the contractor. (The Centre continued to provide cleaning supplies.)

24. Mr. Armour testified with respect to the alleged reduction of hours of the two employees after Mr. Goralski wrote and informed the Centre that in the union’s view they were working more than twenty-four hours per week and were therefore full-time and in the bargaining unit. He explained that the Centre was starting its slow period at that time and therefore the need for cleaning was reduced. He also testified that Mr. Munoz, had been hired/contracted in April to do cleaning and maintenance.

### **Submissions of the Parties**

25. The following is a brief synopsis of the submissions of the parties.

26. The Centre argues that this case is distinguishable from the usual matters in which “anti-union animus” is raised because the two employees in issue were not in the bargaining unit and are therefore not protected under the Act. Furthermore, according to the Centre, the union has not shown any interest in representing them in the past. The tangible effect of this lack of interest is that the Centre has historically contracted out this work without question. In this case the evidence supports the finding that the Centre was following through with plans made several months previously. The Centre’s ability to carry out those plans should not be affected by one letter written by the union. The Board should not draw any inference from the Centre’s failure to advise the employees of the decision to contract out their work because it had no legal obligation to do so providing it complied with the *Employment Standards Act*. The Centre asks the Board to impose damages on the union for “abuse of process”.

27. The union argues that the Centre has not met the onus of proving that the decision to contract out the cleaning/maintenance work and to terminate the employees was not tainted by anti-union animus. It claims that the timing of the contracting out of the cleaning/maintenance work, closely following the union’s letter, proves that the decision was tainted by anti-union animus in the absence of the Centre’s failure to demonstrate the contrary. The union claims that if the decision was made for *bona fide* reasons the Centre would have been able to demonstrate that and has not done so.

28. In reply, the Centre argues that the union has violated the “rule in *Browne v. Dunne*” by not putting its view that they were not credible to the witnesses, along with the reasons for that view.

#### **Decision of the Board**

29. The majority finds that the Centre has not discharged the onus of proving that there was no anti-union animus in its decision to terminate the two employees. The timing of the Centre’s actions leads inevitably to the conclusion that those actions were motivated in part by anti-union animus unless the Centre can prove that it had already made the decision to contract out the work prior to receiving the union’s missive informing it that in its view the employees were in the bargaining unit. The only correspondence from the Centre after receiving that letter is the letter a few weeks later advising the union that the employees were being terminated and that the work was being contracted out. The Centre’s evidence does not demonstrate that it had made the decision to contract out the work prior to receiving the union’s letter. The evidence shows that the Centre had considered doing so the previous January and February but it does not appear that any decision was made to do so until after receipt of the union’s letter. The majority finds that the most likely explanation in the circumstances is that the Centre calculated the small savings that would be gained from contracting out and decided not to pursue it until it realized that the employees might be in the bargaining unit, at which time the option became much more attractive. This finding is supported by the facts that the Centre’s finances actually improved after February, 1997, that there are no minutes indicating that a decision to contract out the service had been made at any management committee meeting, that the Centre’s two witnesses did not agree on when the decision had been made, and that in April the Centre found that it actually had to hire another employee/contractor because there was so much work to be done. Most importantly, the majority’s conclusion is supported by the facts that the contracting out arrangement did not start until June, 1997, the employees were never informed that such a decision had been made until June, 1997 and the contract itself was not entered into until June, 1997. Finally, although the Centre claims that it was seeking ways to reduce costs, no other employee, including Mr. Clawse and Mr. Munoz was laid off or had their “contract” terminated. In light of those facts, it is just not credible that the decision was made prior to receipt of the union’s letter. The timing of the Centre’s actions, therefore, leads the majority to the conclusion that the decision to contract out the work and terminate the employees was tainted, at least in part, by anti-union animus.



30. The majority does not find that the union violated the rule in *Browne v. Dunne*, at least with respect to any matters relevant to this decision. The union called little evidence in this hearing and none which could contradict the Centre's witnesses with regard to the crucial factor of the timing of its decision as the union does not possess that information. The majority's decision is based on the Centre's own evidence weighed on the balance of probabilities and the undisputed fact that the employees were terminated and their work contracted out after receiving the letter from the union. There was therefore no unfairness visited upon the witnesses which the rule in *Browne v. Dunne* seeks to avoid. They were given the opportunity to explain their alleged decision to postpone commencing the contract until June. The majority has determined, however, that their explanation is not believable in the circumstances.

31. The union has also alleged that the Centre reduced the hours of Mr. Mayes and Mr. Aiken after receiving its letter. Mr. Armour did not disagree that their hours may have been reduced but claimed that that reflected a reduction in banquets and other events at that time. Nevertheless, it is not possible for the Board to conclude on the basis of the documents submitted that the hours of the two employees were significantly reduced compared to their hours in the several previous months, which had fluctuated above and below twenty-four hours per week. There were few weeks after the Centre received the union's letter to use as a comparison and Mr. Aiken was absent for a period of five days in June. The Board is therefore unable to find that the union has demonstrated that the two employees' hours were reduced and therefore it is unnecessary for the Centre to meet any onus to show the reduction was not tainted by anti-union animus.

32. The majority therefore finds that the Centre has violated the Act and hereby:

- a) declares that the responding party has violated sections 70, 72 and 76 of the *Labour Relations Act, 1995*.
- b) directs the responding party to cease and desist from the violation of the Act.
- c) directs the responding party to reinstate Kris Mayes and Jody Aiken to their former positions and directs that they be compensated for any losses of income and benefits arising from the termination of their employment.
- d) directs the responding party to post the Notice to Employees attached as Appendix "A" in a conspicuous place in the workplace for a period of sixty days.

33. The applicant has also requested that the Board direct the employer to remit the time cards for all of its employees to the union on a monthly basis, presumably so that it may ascertain whether any other employees are regularly working more than twenty-four hours per week. The Board is not of the view that that order is warranted in these circumstances. The Board remains seized of this matter in the event that a dispute arises concerning the implementation of the Board's order.

#### **DECISION OF BOARD MEMBER J. A. RUNDLE; November 21, 1997**

1. I have reviewed the decision of the majority and with respect must dissent.

2. The applicant and the responding party have had a collective bargaining relationship since 1975. They have continued to negotiate collective agreements and they continue to process grievances. It is therefore difficult for me to understand how this employer can be a participant in anti-union activity

when there has never been any attempt to rid itself of its relationship with the incumbent trade union. Indeed, that concept was never raised by the applicant.

3. Anti-union animus is primarily a pleading which compliments a certification application. The case before us is an unfair labour practice complaint alleging that the employer, by contracting out work, terminated two employees who the union was seeking to represent. I would have thought that this was an issue more properly decided by a Board of Arbitration.

4. The issue that still has to be resolved is the validity of the contracting out. This decision in its present form resolves nothing long term for the parties. The employees in question are still subject to lay-off in the event an arbitrator determines that the employer under the collective agreement can contract out. An arbitrator will also decide whether the individuals in the present case are determined to be employees at all and what rights, if any, flow from that finding.

5. One can understand why the trade union would file this application with the Board; nevertheless, this does not negate the Board's responsibilities to entertain and resolve the main issue. The parties are still from a resolution point no further ahead.

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## Appendix "A"

### The Labour Relations Act, 1995

# NOTICE TO EMPLOYEES

## Posted by order of the Ontario Labour Relations Board

We have issued this Notice in compliance with an order of the Ontario Labour Relations Board issued after a hearing in which both the Societa Italiana Di Benevolenza Principe Di Piemonte c.o.b. as the Da Vinci Centre and the Hospitality, Commercial and Service Employees Union, Local 73 chartered by Hotel Employees Restaurant Employees International Union had the opportunity to present evidence. The Ontario Labour Relations Board found that we violated the Ontario Labour Relations Act, 1995 in terminating the employment of Kris Mayes and Jody Aiken and has ordered us to inform our employees of their rights.

The Act gives all employees these rights:

- To organize themselves;
- To form, join and participate in the lawful activities of a trade union;
- To act together for collective bargaining;
- To refuse to do any and all of these.

We assure all of you that:

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT intimidate or exert undue influence upon you, whether through meetings, individual conversations or otherwise, to prevent you from exercising your right to associate and participate in the lawful activities of a union.

WE WILL NOT lay off, discharge or threaten to lay off or discharge any employee because of that employee's union activity or sympathies.

WE WILL NOT in any other manner interfere with or restrain or coerce our employees in the exercise of their rights under the Act.

WE WILL comply with all directions of the Ontario Labour Relations Board.

Societa Italiana Di Benevolenza Principe  
Di Piemonte c.o.b. as the Da Vinci Centre

Per: \_\_\_\_\_  
Authorized Representative

This is an official notice of the Board and must not be removed or defaced.

This notice must remain posted for 60 consecutive days.

DATED this 21st day of November, 1997.



**0988-96-G International Brotherhood of Electrical Workers, Local 353, Applicant v. Delta Catalytic Industrial Services Ltd., Responding Party v. General Presidents' Maintenance Committee, Intervenor**

**Construction Industry - Construction Industry Grievance - Whether certain disputed work "construction" work covered by the "Principal Agreement", or "maintenance" work covered by the "General Presidents' Maintenance Agreement" - Board not prepared to assign any significant weight to decision of the General Presidents' Committee for Contract Maintenance in Canada regarding the disputed work - Board finding that 7 of 8 projects examined involved construction and not maintenance work - Grievance allowed in part**

**BEFORE:** *Robert Herman*, Alternate Chair

**APPEARANCES:** *L.A. Richmond* and *D. Husky* for the applicant; *Daryn Jeffries, Roy Filion* and *Gord Duggan* for the responding party; *Chris G. Paliare* and *Steven Smillie* for the intervenor.

**DECISION OF THE BOARD;** November 28, 1997

1. This is an application pursuant to the provisions of section 133 of the *Labour Relations Act*, 1995. It was filed on July 2, 1996. There were a number of hearing days dealing with other matters, but ultimately the matter was heard on the merits on October 15, 1997.

2. There is no dispute that the responding party, (hereinafter referred to as "Delta Catalytic"), was at all applicable times bound to a collective agreement with the applicant (also referred to as "Local 353"). This agreement (the "Principal Agreement") covers, amongst other matters, "construction" work in the ICI and other sectors of the construction industry. Similarly, there is no dispute that Delta Catalytic did not apply the terms of the Principal Agreement to the work here in issue. Instead, Delta Catalytic applied the terms of what will be referred to as the "General Presidents' Maintenance Agreement" or "GPMA" (more accurately, the "General Presidents' Maintenance Committee for Canada Project Agreement for Maintenance by Contract in Canada for Petro-Canada Products Limited"), an agreement applicable to the Mississauga Refinery site of Petro-Canada, which is where the work took place. The agreement is between Delta Catalytic and 12 International building trade unions, including the IBEW, and it covers "maintenance" work. The instant decision determines whether the work in dispute is "construction" work, covered by the Principal Agreement, or "maintenance" work, covered by the GPMA.

**Background**

3. The General Presidents' Maintenance Committee for Canada ("GPMC") is a council of 12 International trade unions which negotiates and administers multi-craft collective agreements covering on-going maintenance work performed by building trades persons at locations throughout Ontario and the rest of Canada. The GPMC currently administers agreements which deliver between six and seven million hours of maintenance work to building trades persons in Canada each year.

4. Its authority with respect to negotiations for and administration of collective agreements is covered by its Constitution and By-laws, as signed by its 12 constituent members. The GPMC has negotiated collective agreements for maintenance work at the Petro-Canada Products Limited refinery in Mississauga since the 1960's, and the work in question was performed by Delta Catalytic at this refinery pursuant to the provisions of the currently applicable GPMA covering that site.

5. One objective of the GPMC is to enter into collective agreements which provide employment to building trades persons for maintenance work, and do so because the wages and other conditions in the agreements are competitive. The concern is that major industrial customers, such as Petro-Canada, might choose to have the work in question performed by their own in-house unionized or non-unionized staff, with the result that work otherwise available to the building trades would not be performed using their members.

6. The work in dispute was all performed under the terms of the GPMA. Although members of Local 353 were used for most, if not all, of the electrical work in question, the employer applied the terms and conditions of the GPMA to the work, and not the terms and conditions of the Principal Agreement. Local 353 objected, asserting that the work was properly "construction" work, encompassed by the Principal Agreement, and ultimately, a grievance and the instant application were filed. As initially filed, the applicant asserted that the Principal Agreement had been breached with respect to 50 different pieces of work. The parties were able to narrow the dispute to eight pieces of work. None of the eight items remaining in dispute were amongst the 50 items originally the subject of this application.

7. It is agreed that the only issue for the Board to determine is whether each of the eight items of work in dispute is properly characterized as "construction" work, within the meaning of the Act, and therefore properly the subject matter of this application. It is not disputed that if the Board determines that the work in question was "construction", then the employer would have breached the Principal Agreement through its failure to apply the terms of that agreement to that work.

8. The GPMA is a comprehensive agreement. It defines the scope of the work covered thereunder as follows:

**ARTICLE 5.000 - SCOPE OF WORK:**

- 5.100 The scope of this Agreement covers all work of a maintenance, repair and renovation nature, assigned by the Owner to the Company and performed by the employees of the Company covered by this Agreement, within the limits of the Owner's plant site.
- 5.200 The scope of this Agreement does not cover work performed by the Company of a new construction nature which is work required to erect new facilities in which event the work shall be done in accordance with existing building construction agreements.
- 5.300 The Unions and the Company understand that the Owner may, at his discretion, choose to perform or directly subcontract work for any part or parts of the work necessary in his plant.

**ARTICLE 6.000 - DEFINITIONS:**

- 6.100 Maintenance shall be work performed for the repair, renovation, revamp and upkeep of property, machinery and equipment within the limits of the plant properly.
  - 6.101 "Long-Term Maintenance" shall be the continuing work performed of a maintenance, repair, renovation character within the limits of the plant properly exclusive of "Short-Term Maintenance" defined below.
  - 6.102 The Company will designate the anticipated number of Long-Term Maintenance force job openings at the pre-job meeting and from time to time as job conditions warrant.
  - 6.103 "Short-Term Maintenance" work means work that is terminated within 30 available days of work.
- 6.200 All work performed by the Company on existing equipment and machinery, including all associated work in a given plant, shall be maintenance. This shall include replacement

of existing individual items of machinery and equipment with new units, including all associated work. It is understood that this concept would not include replacement of an entire process system installation in a plant in order to increase production.

- 6.300 Addition of spare machinery or equipment may be done under the Maintenance Agreement provided it is for debottlenecking purposes. Example: There are two existing pumps. Both pumps are required to run at all times to maintain full production. A spare may be added for the purpose of having one pump down for maintenance.
- 6.400 Changes to existing units for reasons of feed stock changes or fuel changes shall be maintenance.
- 6.500 The work "repair" used within the terms of this Agreement and in connection with maintenance, is work requested to restore by replacement or by revamp of parts of existing facilities to efficient operating conditions.
- 6.600 The word "renovation" used within the terms of this Agreement and in connection with maintenance, is work required to change by replacement or by "revamp" of parts of existing facilities to efficient operating conditions.
- 6.700 Fire restoration work will be administered as follows:
  - 6.701 The restoration of a plant completely destroyed by fire is considered construction work.
  - 6.702 The restoration of a major part of a plant including several sections which have been destroyed or damaged by fire, shall be governed by the following criteria:
    - (a) The removal of damaged equipment and the preparation of the damaged area to make it suitable for new equipment will be Maintenance.
    - (b) The installation and erection of new equipment will be Construction.
  - 6.703 When the fire damage is localized to a given operating unit, such as a heater, distillation tower, compressor, pumphouse equipment and the like, then the restoration of same is to be considered Maintenance.
- 6.800 The administration and interpretation of this Article is the responsibility and prerogative of the General Presidents' Committee for Contract Maintenance in Canada.

9. As can be seen, Article 6.800 states that it is the responsibility and prerogative of the General Presidents' Committee for Contract Maintenance in Canada (or the GPMC, as referred to herein) to deal with matters of interpretation of Article 6. Article 7.000 sets up a grievance procedure:

**ARTICLE 7.000 - GRIEVANCE PROCEDURE:**

- 7.100 It is agreed that it is the spirit and intent of this Agreement to adjust grievances promptly. All grievances, including discharge for just cause, but not those pertaining to jurisdictional disputes that may arise on any work covered by this Agreement, must be initiated within fifteen (15) working days of the incident by either the employee in Step I or the Local Union in Step II and shall be handled in the following manner:

• • •

10. Article 8.000 deals with jurisdiction, and reads as follows:



**ARTICLE 8.000 - JURISDICTION:**

- 8.100 Project maintenance conditions do not always justify adherence to craft lines which, in itself, does not establish precedent or change the appropriate jurisdiction of the crafts involved. Composite crews may be formed where conditions warrant, but this is not to be construed under regular operating conditions as the Company's prerogative to assign men out of their usual skill classification.
- 8.200 The Company may, if it desires, maintain a variety of skills, within its group of employees to be prepared to have skills and/or supervision for any type of work that may arise.
- 8.300 It is understood that all employees will work together harmoniously as a group and as directed by the Company.
- 8.400 In the event that any jurisdictional disputes shall arise between two or more Unions represented by this Agreement, an immediate assignment of the work in question shall be made by the Company representative, based upon decisions and agreements of record or other information available. The work is then to continue and, if any of the Unions involved are not satisfied with the assignment, the matter shall be referred to the International Office of the Unions involved for a project decision.
- 8.500 The Company and the Unions agree that such assignment of work involved in a jurisdictional dispute is imperative to the satisfactory operation of this Agreement and the continued operation of the Owner's plant.

11. After the filing of the instant application, a subcommittee of the GPMC, acting on its own initiative, met at the Petro-Canada work site, along with representatives of Delta Catalytic, in order to review the work in dispute. The subcommittee was composed of a representative from the IBEW, along with representatives from the International Boilermakers and the International Ironworkers, and the Executive Director of the GPMC. The subcommittee reported to the GPMC on November 21, 1996, and the GPMC itself issued a decision, on or about March 25, 1997, by which it determined that all of the items in dispute, save one, were properly characterized as "maintenance" work and were to be performed under the GPMA. It determined that the remaining item was properly characterized as "construction" work. It is worth setting out the introductory part of the decision of the GPMC:

**Background:**

This decision arises out of an unusual string of events and actions taken by Local 353 of the I.B.E.W.

In June of 1996 Local 353, through its lawyer, advised Delta Catalytic that it was disputing in excess of 50 items of work. This work had been performed under the General Presidents' Maintenance Agreement and the local alleged such work was construction. At the same time, Local 353 advised the company it would be referring the dispute directly to the Ontario Labour Relations Board under the Section 133 arbitration provisions of the Labour Act.

Local 353 did not grieve this dispute through the grievance procedure nor did it request the General Presidents' Committee to review the work and make a determination as per its prerogative under Article 6.700 of the General Presidents' Maintenance Agreement.

Through subsequent hearings at the Ontario Labour Relations Board, Local 353 narrowed its complaint to 13 items of work. The company researched these items fully and provided information to all parties. This Committee, in the face of this dispute, decided on its own to investigate these items and make a determination as to whether the work was maintenance.

On November 12, 1996, a G.P.C. sub-committee met at the site with Delta Catalytic, reviewed the work, relevant drawings and inspected each job in the field. The sub-committee's decision was presented to the full Committee at a meeting held November 21, 1996 in Winnipeg. The sub-committee decision was endorsed as a decision of the full Committee.

**The Work in Dispute and Decision:**

The November 12, 1996 Site Sub-Committee was composed of:

William Warchow, I.B.E.W.  
George Henry, Boilermakers.  
Don Oshanek, Ironworkers.  
Steve Smillie, G.P.C. (recording)

Present for the Company:

Gord Duggan, Area Manager.  
Bruno Barazza, Superintendent.  
Daryn Jeffries - Legal Counsel

12. As a result of this decision, Delta Catalytic acknowledged it had breached the Principal Agreement with respect to the work found by the GPMC to be "construction" work, which was the work performed on the Phoenix Temporary Feeder.

13. The applicant asserts that the eight projects or bundles of work remaining in dispute are all "construction" work. Delta Catalytic asserts that they are all properly characterized as "maintenance" work. In addition, both Delta Catalytic and the GPMC submit that the Board ought to defer to the decision of the GPMC, reached on March 25, 1997, and adopt its determination as to the proper characterization of the work in dispute. Failure to do so, in their submission, would undermine the many years of stability enjoyed by the employers in this sector of the industry, and seriously impede their ability to remain competitive, and undermine the many years of stability and work opportunities obtained for members of the building trades unions. They note that no other local union is challenging the role and effect of the GPMA's. In the circumstances, they submit, the Board ought to accede to the GPMC's characterization of the work, unless it was patently unreasonable, or unless there is a compelling reason otherwise. As they put it, the main players in this industry are the International Unions, and they have determined, through their membership on the GPMC subcommittee, that the work in dispute is "maintenance". The Board ought to endorse that decision, both in recognition of the expertise of the decision-makers, and for the overall good of the process.

**The Decision**

14. The first question for the Board is what weight or effect to give to the decisions made by the GPMC. The Board begins by acknowledging the very real value of the GPMA's, which have been entered into by the industry major players, and which have been applied to work in this sector for decades. Twelve international building trade unions have chosen to enter these agreements, and have chosen to regularly renew them over this time period. These trades have made the assessment, shared by the employer parties to these agreements, that it makes economic and business sense in this sector for a separate legal and regulatory regime to exist for in-house industrial repair and/or maintenance (the word "maintenance" is used here as parties to the GPMA's describe such work in their agreements). These agreements pre-date the existence of the statutorily imposed province-wide ICI collective agreements, and through them, the participants have tried to treat differentially work of this nature, in recognition of the competitive realities prevalent in this sector. The Board has no doubt that the existence of these arrangements, and their application, has enabled the signatory building trade unions to receive work for their members which would otherwise have been contracted on a non-union basis.

15. Whatever the merits of these relationships, structures, mechanisms and collective agreements, when issues do arise in Board proceedings, the Board is guided by the provisions of the *Labour Relations Act, 1995*. The parties have agreed that this Board is to determine whether the work in question is "construction" or "maintenance", or more accurately, whether it is "construction" work

covered by the Principal Agreement. Even absent their agreement in this respect, it is unclear whether the Board would have declined to rule on this issue: see, in contrast, the facts recited in the decision of the Board in *Delta Catalytic Industrial Services Limited No. 1*, [1996] OLRB Rep. March/April 233, where the Board determined it was appropriate to defer to the GPMC decision-making process.

16. As the Board is to determine the proper characterization of the work in dispute, the role of the GPMC and the impact of its decisions are very limited, and we give very little weight to the decision of the GPMC of March 25, 1997.

17. We say this for several reasons. First, this is the Board's determination to make in the circumstances here, and not the GPMC's. Second, the argument for deferring to the expertise of the GPMC and adopting its decision on the questions in issue, as opposed to deferring to its process and decision-making power, depends to a large extent on the GPMC having reached its decision through the mechanisms set out in the GPMA. The entitlement of the GPMC to make a decision rests upon the claim that the subcommittee, or the full GPMC, was exercising the rights or duties it has under the GPMA.

18. However, it is not evident that the process utilized by the GPMC to investigate and rule upon the work in dispute was duly authorized. The applicant did not grieve (assuming it could have), nor is there any evidence that the International did, as signatory party to the agreement. The GPMC initiated the investigation on its own motion. The applicant in no way participated in the subcommittee process, nor is there any evidence that it was aware that the subcommittee was conducting an investigation and that it would be making a decision on the work in dispute. Presumably, the GPMC was desirous of resolving this dispute "in-house", so to speak, and in a manner which would minimize the potential for disruption of the GPMA scheme, and it therefore took pre-emptive action to ensure, to the extent possible, that the Board had before it the views of the GPMC on the work in dispute.

19. Such an intention would perhaps explain why one of the members of the subcommittee investigating the work was an international representative of the IBEW. Having a representative of the trade involved in the work dispute on the subcommittee investigating the dispute, would appear inconsistent with the GPMC's own procedures for investigating work disputes. As the Board in *Delta No. 1* (above) wrote, at paragraph 16:

Mr. Smillie [Executive Director of the GPMC] testified that Step IV of the grievance procedure, as it relates to the obligations on the GPC contained in Article 6.800, involves the setting up of a committee of International Representatives from unions not involved in the dispute. In this case Mr. Smillie assigned Mr. Gerry Bentley from the U.A. (who served as Chair of the panel), George Henry, from the Boilermakers, and Don Oshanek, from the Ironworkers, who served on the panel as members. Mr. Smillie was present throughout the Step IV process and served as note taker.

20. Third, quite apart from the process utilized by the GPMC in the instant case, its decision offers little guidance to the Board. The decision merely states the conclusions reached by the subcommittee with respect to each item in dispute. Generally speaking, the decision of the GPMC gives a very brief description of each item, and then sets out its conclusion that the work is "maintenance" or "construction", as the case may be. There is no analysis, no reference to prior decisions of the GPMC, nor to the definitions contained in the GPMA, nor to jurisprudence of this Board. Given this lack of analysis or detail, the request of the Board that it give deference to the decision of the GPMC amounts in practical terms to a request that the Board merely adopt in its entirety the decision of the GPMC as determinative, simply because it was made by the GPMC. The Board is asked to accept the expertise of the GPMC without any information as to how or why the GPMC made the decisions which it did in the circumstances, and without any ability to assess whether those decisions were reasonable or not. The request to defer to the expertise of the GPMC is in reality a request to defer to its decision-making



process, a request inconsistent with the question to be determined by the Board, whether the work is “construction” or “maintenance”.

21. For these reasons, the Board has found the decision of the GPMC to be of little assistance.

22. The Board turns then to a consideration of whether the work in dispute is “construction” or “maintenance”. The general approach taken by the Board to this question is as described in *National Elevator & Escalator Association*, [1991] OLRB Rep. Apr. 555:

14. The applicant referred the Board to *Levert & Associates Contracting Inc.*, [1989] OLRB Rep. June 630, where, at paragraphs 12 to 15, the Board dealt with a question regarding whether certain work was in the construction industry or not as follows:

12. The Board has recognized a distinction between maintenance work and construction work since its decision in *Tops Marina Motor Hotel*, 64 CLLC ¶16,004, the first reported decision interpreting the definition of construction industry in what is now clause (f) of subsection 1(1) of the Act, even though the words maintenance or maintaining are not used in the definition or elsewhere in the Act. *The problem always is to make the distinction in a particular fact situation because there is no clear demarcation between maintenance work and construction and, in the Board's experience, what the parties see generally as being one or the other appears to be very much in the eye of the beholder.* See, for example, *Kidd Creek Mines Ltd.*, [1984] OLRB Rep. Mar. 481, at paragraphs 46 and 47. *The Board, of course, must determine whether or not work characterized by a party as maintenance work is construction work for purposes of the Act, not for some more general purpose.* The Board's decision in *Master Insulators'*, *supra*, is the first reported decision which lends some definition to the task of distinguishing maintenance work which is not construction work from repair work which is.

13. The facts here are clear. The dissolving tank and the vapour pipe were functioning fully immediately prior to the shutdown. But, because they both had developed thin areas, it was decided, in the case of the tank, to reinforce those areas and, in the case of the pipe, to replace it because that was more economical than patching or cutting out and replacing the thin areas. The work was not an addition to the recovery and steam plant and was not for the purpose of increasing its production capacity. It was work done for the purpose of avoiding having the tank or pipe fail while the mill was operating. Clearly, it was work which would assist in preserving the functioning of the recovery and steam plant and it was not work done for the purpose of restoring a system which had ceased to function or function economically.

14. These facts distinguish this case from *Inscan*, *supra*, on which the applicant relies, where fire damage at a refinery stopped production for three weeks of a feedstock for lubricating oils. That process represented approximately ten per cent of the total product capacity of the refinery. The facts herein are much more analogous to those in *Gallant Painting*, *supra*, on which the respondent relies. In that case the Board found that the painting of “...pipes, tanks and other containers...”, amongst other things, in two petrochemical plants, was work which “...will preserve and protect the structures from corrosion and thereby extend their useful lives.”. The patching of the tank and replacement of the vapour pipe served to extend the useful life of the recovery systems in the recovery and steam plant of the mill.

15. The fact that there were other contractors in the mill who may have been employing boilermakers pursuant to the boilermakers provincial agreement, an agreement which has application in the industrial, commercial and institutional sector of the construction industry, is of no assistance to the Board in this case. The question the Board must answer is whether the respondent was performing work in the construction industry and was an employer within the meaning of clause (c) of section 117 of the Act. That requires an analysis of the work which the respondent's employees were performing. There is no

evidence that the work which they were doing had any connection whatsoever with the work being performed by the other contractors.

[emphasis in the original]

Counsel for the applicant urged the Board to conclude that insubstantial or “minor” work should not be characterized as construction work; that is, that not every correction of a malfunction in an elevator system constitutes construction work.

15. Section 1(1)(f) of the Act defines the construction industry broadly for labour relations purposes:

1.-(1) In this Act,

- (f) “construction industry” means the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at the site thereof;

The Board’s decision in the *Master Insulators Association of Ontario Inc.*, [1980] OLRB Rep. Oct. 1477 is probably the one most often referred to in cases in which the Board must determine whether a particular kind of work is in the construction industry or not. At paragraphs 22 to 24 and 27 to 29 of that decision, the Board offered an analysis which has become the corner-stone of the jurisprudence on this question:

22. However, the Board, since the introduction of the construction industry provisions into the Act in 1962 in *The Labour Relations Amendment Act*, 1961-62, S.O. 1961-62, c.68, has regarded maintenance as not included in the definition of “construction industry” in section 1(1)(f). For example, in the *Tops Marina Motor Hotel*, case, 64 CLLC ¶16,004, an application for certification was held to be properly made under the construction industry provisions of the Act. In that case the Board, in determining an appropriate bargaining unit of carpenters and carpenters’ apprentices, stated that it was not its intention to include in that bargaining unit carpenters who might subsequently be employed to do ordinary maintenance work once the motor hotel was in operation. In the *Dravo of Canada Ltd.* case, [1967] OLRB Rep. June 261, the Board distinguished between an employer’s maintenance operations and its construction operations and in *The Board of Governors of The University of Western Ontario*, case, [1970] OLRB Rep. Oct. 776, the Board determined that the employer was not operating a business in the construction industry because the employees who were the subject of an application for certification were engaged in maintenance rather than repair. In the *Overhead Door Co. of Toronto Ltd.* case, [1974] OLRB Rep. July 482, the Board examined the business of an employer who was engaged in the sale, distribution, installation, maintenance and warranty of various types of wood and metal doors and concluded that whether “maintenance” is to be considered as part of “construction industry” depends on the type of “maintenance” being performed and on the context of a given employer’s operations.

23. The evidence before the Board established that insulators use the same tools, apply the same insulation and exercise the same skills whether the work is clearly new construction, which was agreed by all of the parties to be included within the definition of “construction industry” in section 1(1)(f) of the Act, or is described as either “maintenance” or “repair”. Indeed, the line of demarcation between “maintenance” and “repair” is not a sharp one. On more than one occasion witnesses who were unable to define either “maintenance” or “construction” expressed confidence that they knew “maintenance” and “construction” (and, therefore, “repair”) when they saw it.

24. Almost all of the work upon which this complaint is based involved applying insulation in order to maintain or sustain a system that was either producing or capable of producing a product according to its design. In some instances the system or portion of a system was actually functioning during the removal or application of insulation. In other instances a system or portion of a system was briefly closed down or advantage was taken of periodic or annual shutdowns in order to remove or apply insulation.

• • •

27. The complainant referred to numerous legal authorities in its argument and its word by word analysis of section 1(1)(f). These authorities were drawn from many jurisdictions and concerned the interpretation of “constructing”, “altering”, “repairing”, “demolishing”, and “revamping” in contracts and legislation in a wide variety of contexts. However, the Board found none of these authorities to be persuasive. The authorities cited before the Board under scored [sic] the necessity of considering the context in which a word is used in order to interpret its meaning.

28. With the exception of the work performed at the premises of Fearman and the work on a new emergency shower and minor work in a change house at Stelco, the work performed by the employers who were named in this complaint was essentially similar in nature. In our view, the work at the premises of Fearman, which involved an addition to an existing facility and involved both relocation of producing units and the expansion of existing capacity, was clearly new construction. Similarly, the work on the emergency shower and change house at Stelco was an addition for the safety and comfort of Stelco’s employees and represented new construction. This work is clearly within the industrial, commercial and institutional sector of the construction industry. The rest of the work referred to in the complaint was, for the most part, clearly *work which sustained and maintained an operating facility and enabled that facility either to operate efficiently or to attain its designed or production capacity and it to be regarded as maintenance work. Maintenance work is to be distinguished from construction work which involves the addition to an existing facility or which will increase the designed or production capacity of an existing facility.* However, in so far as there was work of new construction, which was purportedly done under the maintenance agreement, it was a violation of section 1341a(1) of the Act.

29. Maintenance work performed by the employers who were named in this complaint is in reality part and parcel of the production and maintenance operations of the industrial clients for whom the work is performed. These industrial clients may, and frequently do, perform their own maintenance work with either their own employees who are included in their own industrial bargaining units. In the context of the work affected by this complaint “*maintenance*” is difficult to distinguish from “*repair*”. In our view, it is a question of the context of any given work and the degree of addition or subtraction of such work to an existing system or part of a system. Where the work assists in preserving the functioning of a system or part of a system, such work is maintenance work. Where the work is necessary to restore a system or part of a system which has ceased to function or function economically, such work is repair work. “*Maintenance*” and “*repair*” are not mutually exclusive concepts, and lack of adequate maintenance will surely produce a situation where repair becomes inevitable. In our view, the performance of adequate and timely maintenance forestalls or reduces the requirement for repair.

[emphasis in the original]

16. As is evident from the *Master Insulators, supra*, case and the Board’s subsequent jurisprudence, there is no clear distinction between construction and non-construction work. It is particularly difficult to draw a distinction between “repair” work, which is construction work, “maintenance” work, which is not (see, for example, *Levert & Associates Contracting Inc., supra*, *Briecan Const. Limited*, [1989] OLRB Rep. May 417, *Inscan Contractors (Ontario) Inc.*, [1986] OLRB Rep. May 640, *Kidd Creek Mines Ltd.*, [1984] OLRB Rep. March 41, *Quinard Limited*, [1982] OLRB Rep. July 1054). Whether something is repair or maintenance work will depend upon the nature and purpose of the work in question in the context of the facility of system in or to which the work is being performed. Generally, work performed on existing equipment in an existing facility for the purpose of keeping the facility or a system in it operating properly before the facility or system has ceased to do so, is appropriately characterized as maintenance work. On the other hand, work involving the addition to or replacement of equipment for the purpose of either increasing the capacity of the facility or system, or restoring the ability of a facility of system to function properly, is appropriately characterized as repair work. The amount, apparent significance, or value of the work in question may be part of the context in which the assessment is properly made but are in no



way determinative of the question. Similarly, whether a facility or system is shut down while the work in question is being performed may also be relevant, but will not be determinative.

23. The applicant submits that in today's technological world, practically speaking, every time new electrical work is done on a facility, project, system, or machine, it is "construction" work and not "maintenance". Employers will virtually always choose to upgrade electrical systems when work is being done on them, and any work on them will involve new wiring, new conduits, new termination devices or new process control devices, to take some examples. Such work will always, asserts the applicant, enable the facility, project, system, or machine to add to or enhance its capabilities, if only because of the installation of the improved technology.

24. This is too simplistic and microscopic an analysis. The nature of electrical work will inevitably mean that new hardware is installed as part of the work, whether it be wiring or electrical or electronic devices, but this does not inevitably mean that the work is "construction". In some cases, work of this nature may not be meaningfully different in concept from the installation of new piping, new iron plating or new insulation. While the raw material involved may be new, that fact alone will not necessarily be determinative. The Board still must consider the nature and purpose of the work, in the context of the particular facility, project, system, or machine in question. The replacement of an outdated electrical measuring device with an updated electronic measuring device, which may well be more efficient and enhance the measuring capability, will not necessarily be "construction" work, where that is all that is being changed, and where the nature and purpose of the system has neither changed nor has its overall capability or productivity been enhanced. The result will depend on the extent of the change and its nature and purpose. Similarly, the installation of new gauge wiring for old gauge wiring will not necessarily be "construction" work. It is the context and purpose of the work which must always be considered and not only the detail of the work that the particular trade is asked to perform.

25. For its part, Delta Catalytic asserts that the Board's approach in considering whether work is "construction" consists of asking itself the following three questions, a positive answer to any one of which will lead to a conclusion that the work is "construction":

- (1) Does the work represent a significant addition to the facility or system?
- (2) Does the work increase the design or production capacity?
- (3) Was the work necessary to restore a system or part of a system which it ceased to function or function economically?

26. It is with respect to the first question that some comment is appropriate. It represents too simplistic and macroscopic an analysis. Work which does not represent a *significant* addition to a facility or system can still be "construction" work. To phrase the question as the employer has presupposes the answer, and assumes that only major construction projects or works would be classified as "construction" under the Act. This is not so. As will be seen in some of the items in dispute here, work on an isolated project which is a relatively small and discrete part of a facility or system can nevertheless constitute "construction". The approach taken by the Board remains as described in *National Elevator and Escalator* (above). Whether the work represents a significant addition is only one factor.

27. With these comments, we deal now with the individual projects or items in dispute.

### **Effluent Feeder Upgrade**

28. The work on this system was necessary in order to comply with provincial environmental legislation. Petro-Canada was required to increase its effluent treatment capacity, as the existing

capacity was insufficient to accommodate large amounts of inflow of contaminated storm water during heavy rainfalls or runoffs. Previously, the system had two storm basins, which collected and held the water until it could be treated and released. The work involved the installation of two extra holding tanks, and an increase in the pumping capacities at existing basins or tanks. Six new 200 horsepower pumps were installed, as was new cable, conduit and instrumentation. The instrumentation included new bearing detectors, pressure transmitters, and level sensors. A new 30 foot high bridge was built over the road, and power was supplied along this bridge and to motors situated on a new platform constructed on one of the tanks. A new data line was also installed, to link the new monitoring equipment.

29. The stored water is still filtered, aerated, clarified and tested in the same manner as it was before, to ensure it is free of contaminant before being released into the lake. There has been no increase in the speed with which the water is treated, nor change in the method of treatment. Nevertheless, this work is all “construction”. The capacity of the system, albeit its storage capacity, has been increased in order to comply with environmental requirements. The work was done as an enhancement or addition to the system, and not merely to preserve its current function or level of function. Additional tanks were added, additional pumps were added, and completely new electrical systems and instrumentation were added, with monitor systems or parts of the system which did not exist before. But for the need for the increased storage capacity, the system would not have changed. The nature and purpose of the work was to change the system to meet new regulatory requirements, to increase its capacity, and not merely to maintain it. The electrical or electronic work that was performed was part of the “construction” work involved in this project.

#### **Cooling Tower Reliability**

30. For environmental reasons, Petro-Canada decided to replace chlorine as its treatment chemical in the Cooling Tower, and to use the more environmentally friendly chemical, Javex, in its place. The corrosion monitoring system was replaced to allow for a portable corrosion rate meter probe instead of the existing manual corrosion monitoring system. Existing transmitters were replaced with flow transmitters, but the existing conduit was re-used in this process. An electronic differential pressure transmitter was installed in the biofilm monitoring system in order to monitor the system at the control room, instead of locally. The oxidizing microbiocide controlling system was altered in order to allow for automated monitoring and water treating, thereby eliminating the need for operators to manually test and treat the water. Instrumentation was changed, which allowed for data to be sent to the control room for monitoring.

31. Although the Cooling Tower still performs the same function, it uses a different chemical process, and a new and different monitoring system, which allows monitoring at the control room, rather than at the local site. The electrical work involved replacing the existing, manual corrosion monitoring system with a new portable corrosion rate meter probe, and the existing pressure transmitters were replaced with flow transmitters utilizing different technology. There was various other new instrumentation and wiring installed in order to allow monitoring from the control room.

32. This is “construction” work. The way in which the process works has been changed, although the purpose and role of the Cooling Tower remains the same. The system itself has been changed, not merely maintained, so that it can perform its function through a different process, with a monitoring system that now monitors a different chemical, and from the control room, rather than locally. This work was designed to change and improve upon the manner in which the system worked, by converting to a new type of system which is able to use a chemical that is less damaging to the environment.

### **HDN/DDS Unit Revamp**

33. This unit removes sulphur and nitrogen from the feedstock and debottlenecks the flow from one unit to another. The system performs the same function, with what appears to be a reduction in capacity.

34. The facts are very sketchy, and it is not entirely clear as to what work was done, or why it was done; however, it appears as if some of the work was done in order to repair the system, or at least to repair the electrical parts of the system, as they were found to be unsafe and unreliable, and some was done in order to change the unit to allow the use of a different feedstock for the removal of the nitrogen and sulphur. New instrumentation, incorporating new technology was installed, along with the necessary new cabling and conduit to support the new instrumentation.

35. The applicant has not established that this work is “construction”. The nature and purpose of the unit and system remain the same, capacity is reduced, and the manner of operation has remained unchanged.

### **Tank 12**

36. This tank was converted from a bunker storage facility holding bunker oil, to a wax product storage unit, holding liquid wax. The electrical work involved new conduit and instrumentation, which flowed from the change in the nature of the product being stored. A new power source was installed.

37. This is “construction” work. The capacity has not changed and this is not a significant change to the facility or system, but the purpose of the tank has changed. While the tank remains a storage tank, the nature of the product being stored is different, with all the necessary work performed in order to enable the tank to store the new product, in effect changing the tank’s function.

### **Hydrobon Compressor Cooling System**

38. This system was formerly an open system, which cooled the hydrobon unit compressor deck. It had to be checked and filled weekly. For reasons of safety and reliability, and environmental concerns, the system was converted to a closed loop system. More efficient pumps were installed, with relocated new wiring, and new instrumentation to permit remote sensing at the control room. The changes were made to reduce the time spent in checking and filling the system, and to prevent potential contamination of the system which can result from the weekly checking and filling.

39. This is “construction” work. The way in which the system is operated has changed, although its overall function has not, and although it uses the same method of cooling the hydrobon unit compressor deck that it did before. Because of the work, the system no longer has to be filled and checked as it was before. Thus, the work changed the way in which it is run, making it more efficient than it was before and also making it an enhanced system, as the risk of contamination has been reduced.

### **Fiber Optic Data Highway**

40. Prior to the installation of the Fiber Optic Data Highway, Petro-Canada had three control rooms which were unconnected and which could not communicate with each other. The installation of the Fiber Optic Data Highway connected these three control rooms, so that any part of the plant can be controlled through any one of the three control rooms. The purpose of the project was to ensure that, in the event of a system crash in any unit or area due to a broken circuit, there will be no shutdown or



down time of units due to the lack of critical monitoring, and also presumably, to enable central control monitoring.

41. This is “construction” work. A new and different monitoring system has been installed, in order to change the manner in which the three control rooms can communicate with each other and the manner in which they can monitor systems. Through the installation of the highway, the three control rooms can now monitor the entire refinery. This is a change in capacity and in the manner in which the monitoring takes place. An entirely new highway has been installed, where none existed before.

#### **Stack Emission Monitoring**

42. The boilerhouse stack and the sulphur recovery unit stack at Petro-Canada emit fumes. The monitoring of these stack emissions has always occurred at Petro-Canada, for environmental reasons. Prior to 1985, stack emissions were monitored manually. Between 1985 and 1991, Dragster Tubes were used. Between 1991 and 1995, local electrical readouts in the control room were used to continue this monitoring. This system has now been replaced with a new modern fiber optic link to the computer control rooms, where no fiber optic link previously existed. This system has been upgraded, so that it now complies with environmental regulations and standards, by changing the way in which emissions are monitored. The system worked properly before, and did not require maintenance to ensure that it continued to function properly. Rather, in order to meet increased standards, it had to be upgraded. It now monitors emissions where no monitoring was done before, and new monitoring systems have been installed, not merely replacements. This is “construction” work.

#### **Dock Shelter**

43. The Dock Shelter is a portable office, used as a shelter for employees working on the dock. The former dock shelter was getting old and it needed replacing. A new prefabricated shelter was bought and installed on the foundation of the former dock shelter. The electrical work necessary consisted of the wiring of the new shelter and the installation of an air-conditioning system, where none existed before. The work is the installation of a brand new building, with an entirely new system (the air conditioning system) added as part of the installation. This is not merely maintenance, it is “construction” work.

44. We have now dealt with all the work in dispute. As noted, and consistent with the decision of the GPMC of March 25, 1997, it was agreed at the hearing that the work on the Phoenix Temporary Feeder was properly characterized as “construction” work.

45. Where the Board has concluded that the work in question was “construction”, the responding party has breached the collective agreement, through its failure to apply the terms of the Principal Agreement.

46. The Board will remain seized with respect to all remedial aspects and any matter arising out of this decision.

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**2159-97-R Patrick Melville-Laborde, Applicant v. Brewery, General and Professional Workers’ Union, Responding Party v. Diversey Lever Canada, A Division of U.L. Canada Inc. (Equipment Division), Intervenor**

**Termination - Union asking Board to refuse to process termination application and/or give effect to result of representation vote because applicant failed to deliver copies of the Board’s**

**Interim Certification and Termination Rules, Information Bulletin No. 2 - Vote Arrangements, and a blank response form - Union's request dismissed - In view of results of representation vote, application granted**

**BEFORE:** *Pamela Chapman*, Vice-Chair, and Board Members *J. A. Ronson* and *H. Peacock*.

**DECISION OF THE BOARD;** November 17, 1997

1. Further to the Board's decision dated October 17, 1997, the Board has now received and reviewed the submissions of the parties concerning the only issue remaining in dispute in this application for a declaration terminating the bargaining rights of the responding party ("the union").

2. That issue is outlined at paragraphs 2 through 5 of the earlier decision. The union asks that the Board refuse to process the application and/or give effect to the results of the representation vote, because the applicant failed to deliver to it copies of the Board's Interim Certification and Termination Rules, Information Bulletin #2 - Vote Arrangements, and a blank response form. It is not disputed that the applicant delivered to the union, and to the employer, a copy of the application itself.

3. The employer, and the applicant, assert first that the union cannot now request this relief from the Board as the matter is *res judicata*. In its decision ordering a vote, on September 22, 1997, the Board (differently constituted) stated:

3. The responding party has not filed a response to the application. It has, however, sent a letter to the Board claiming that the application does not "include all of the materials required by the Board's rules". As such, it asks for the application to be dismissed. Unfortunately, the letter does not indicate in what respect the application is deficient, and it appears to the Board to be sufficient. Accordingly, it will be processed in the normal course. ...

4. The union argues that this decision does not constitute an explicit exercise of the Board's discretion pursuant to Rule 22, or that if the Board did exercise its discretion it did so based upon a "perverse finding of fact". This panel will not consider the latter argument, as no request for reconsideration of the September 22, 1997 decision has been made.

5. With respect to the question of whether or not the Board decided the issue raised by the union concerning the sufficiency of the materials delivered to it by the applicant, we have concluded, based upon the language of the decision, that it did. The Board makes no explicit reference to Rule 22, which is not surprising given that it did not have before it a specific request by the applicant to abridge the rules. It is not clear, however, that in deciding the matter the Board need have referred to Rule 22. There is no penalty set out in the body of Rule 43bb for a failure by an applicant to comply with all or part of the rule. However, Rules 17 to 22, under the heading "Where Rules Not Complied With", describe the possible consequences of a failure to comply with any of the Rules of Procedure. Rule 17 provides that "an application or response *may* not be processed if it does not comply with these Rules (emphasis added)". A careful reading of the Board's decision of September 22, 1997 suggests that the Board considered the union's claim that the application as delivered to it was deficient under the Rules, decided that it was sufficient, and then declined to exercise its discretion under Rule 17 to not process the application because of the alleged deficiencies. Instead, the Board ordered that the application be "processed in the normal course". This, in the context of Rule 17, seems to be a decision rejecting the union's submissions.

6. In any event, even if the matter were not *res judicata*, we would not be inclined to accept the union's claim that the failure to deliver certain of the materials required to be delivered to the union pursuant to Rule 43bb ought to in these circumstances result in a dismissal of the application.

7. It is not disputed that the application itself was delivered to the union in a timely fashion; indeed, certain materials not required to be delivered pursuant to the rules, including a copy of the evidence of employee wishes filed with the Board, were also provided to the union. There can be no claim, therefore, that the union did not have proper notice of the application, as was confirmed by their prompt correspondence to the Board four days after the application was filed. Had the union been prejudiced in its ability to complete and file a response properly through the lack of a copy of the Interim Rules, the Information Bulletin on vote arrangements, or a blank response form, nothing prevented it from asking the Board for a copy of these documents, or for additional time to complete and file its response, if required. The union decided not to ask for such an accommodation, however, and instead sought the dismissal of the application. When it learned by the Board's decision on September 22, 1997 that the Board intended to process the application in the normal course, and to proceed to hold a representation vote, nothing prevented the union from participating in that process, and again it demonstrated that it was fully aware of the Board's intentions by writing to the Board on September 23 and October 3, 1997. In all of its correspondence to the Board concerning this issue, on September 16, 23, October 3, 24, 30, and November 11, 1997, the union has not pointed to any prejudice to its position on the termination application, or to its ability to participate fully in the proceedings, arising out of the failure of the applicant to deliver the documents listed above together with the copy of the application it did provide.

8. The union relies upon the Board decisions in *Ontario Public Service Employees Union*, [1996] OLRB Rep. January 23 and *Call-a-Cab Limited*, [1997] OLRB Rep. January/February 5, in support of its position that the Board should strictly enforce Rule 43bb and dismiss any application that has not complied with its requirements concerning delivery. However, neither case is analogous to the matter presently before us, having regard to the nature of the deficiencies and the relevant rules considered by the Board. In both the *OPSEU* and *Call-a-Cab* decisions, the Board found that the applications were not filed in a timely fashion, as the date of filing with the Board, determined with reference to Rule 43, was the date material was actually received at the Board, rather than the date on which it was mailed. In *Call-a-Cab*, the applicant had also failed to deliver a copy of the application itself to the responding parties before filing it with the Board. There was no issue relating to delivery in the *OPSEU* case.

9. Therefore, we would have no difficulty in concluding, were the question raised by the union not *res judicata*, that it would not be appropriate in the present circumstances to refuse to process the application because of the applicant's failure to deliver to the union certain of the documents required pursuant to Rule 43bb. There being no other issues in dispute, the results of the representation vote will therefore govern the outcome of this application.

10. On the taking of the representation vote directed by the Board, more than fifty per cent of the ballots cast by employees in the bargaining unit were cast in opposition to the responding party.

11. The Board declares that the responding party no longer represents the employees of Diversey Lever Canada, A Division of U.L. Canada Inc. (Equipment Division) for whom it has heretofore been the bargaining agent.

12. The Registrar will destroy the ballots cast in the representation vote taken in this matter following the expiration of 30 days from the date of this decision unless a statement requesting that the ballots should not be destroyed is received by the Board from one of the parties before the expiration of such 30 day period.

13. Meeting and hearing dates set previously are hereby cancelled.



14. The employer is directed to post copies of this decision immediately, adjacent to all copies of the "Notice of Vote and of Hearing" posted previously. These copies must remain posted until the date that had been set for the hearing.

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**2831-96-U; 2834-96-U** National Automobile, Transportation and General Workers Union of Canada (CAW-Canada), Applicant v. **Dover Corporation (Canada) Limited**, Industrial Division, Responding Party

Change in Working Conditions - Discharge - Discharge for Union Activity - Interest Arbitration - Practice and Procedure - Unfair Labour Practice - Board earlier directing that first collective agreement between parties be settled by arbitration - Union alleging that employer unlawfully discharged 4 employees shortly after Board's first contract direction - Employer asserting that union had elected to have matter of discharges dealt with by interest arbitration board seized of the contract dispute and that unfair labour practice application should accordingly be dismissed - Board rejecting employer's request to dismiss (without prejudice to employer's right to argue how Board ought to proceed in view of whatever the award of the interest board may be) - Board, however, deferring further consideration of application to next hearing dates scheduled 7 weeks hence (by which time results of interest arbitration may be known to the parties)

**BEFORE:** *Bram Herlich*, Vice-Chair.

**APPEARANCES:** *Frank Luce, Linda Ackworth, Ron Joyal and Archie Bailie* for the applicant; *James A. LeNoury, Robert Pearson and Eugene Koszika* for the responding party.

**DECISION OF THE BOARD;** December 5, 1997

1. After hearing and considering the parties' submissions regarding the motion brought by the responding party (the "employer") to dismiss these applications, I delivered the following ruling orally on December 3, 1997:

1. These applications were filed in December of 1996. A decision has issued in this matter wherein the Board (differently constituted) resolved certain issues on the basis of agreed facts and legal submissions.

2. The parties now agree that the matters remaining in dispute between them pertain essentially to the discharge of 4 employees shortly after the Board's direction that a first collective agreement between the parties be settled by arbitration (see *Dover Corporation (Canada) Limited Industrial Division*, unreported, November 22, 1996; application for reconsideration dismissed [1997] OLRB Rep. July/August 568; application for judicial review dismissed, as yet unreported, Court File No. 637/97, November 14, 1997) and to the claim of the applicant (the "union") that the employer's decision to remove certain machinery from the plant constitutes an unfair labour practice.

3. The parties advise that the hearing in the interest arbitration proceedings are scheduled to continue and will, in all likelihood, conclude on December 10, 1997.

4. The parties further advise that there are several fashions in which the decision of the interest board of arbitration (the "interest board") may impact on the matters currently before this Board.

5. For example, in relation to the removal of machinery, the union is apparently seeking a term from the interest board that all machinery be returned to the Strathroy plant.

6. With respect to the discharges there appear to be at least three different ways in which the award of the interest board may impact on the affected employees.

7. First, in what might be seen as a curious staking of positions, the employer asserted that the union's proposed Article 33.04 would, if adopted by the interest board, mean that the discharges would be nullified as a consequence. Completing the symmetry of unexpected positions, the union suggested that there might be numerous arguments available to negate any such conclusion. Perhaps more important in relation to the discharges, the union is seeking that the interest board either directly or indirectly provide access to a review of the discharges on a standard of just cause.

8. The employer argues that the union, having chosen to advance the proposals it has to the interest board, ought not to be permitted to proceed with this application before this Board. The union ought to be seen to have made an election and should not be permitted to pursue the same matter in a separate forum. The employer raises the spectre of dual proceedings and the possibility of inconsistent determinations.

9. Essentially, the employer argues that the union, by putting these issues before the interest board, has transformed them into "matters in dispute" within the meaning of section 43(12) of the *Labour Relations Act, 1995* (the "Act"). As a consequence, the employer argues, those matters must now be determined by the interest board pursuant to that section.

10. In these circumstances, it is argued, the Board ought to dismiss the application and effectively require the union to live with the fruits of the interest board.

11. The employer relies on the case of *Collingwood Shipyards*, [1967] OLRB Rep. July 376. In that case the Board dismissed an application brought by a rival trade union in relation to discharges of employees who, it was alleged, were supporters of the rival union in its bid to displace the incumbent. The discharges had already been referred to arbitration by the incumbent union.

12. In those circumstances the Board determined that the application ought to be dismissed. It also referred to the incumbent union's obligation under section 74 as a control on the quality of the incumbent's representation of the grievors, a matter which may have been of some concern to the rival union and its supporters.

13. I am not persuaded that the case is of direct applicability to the instant facts. Perhaps the primary distinction relates to the fact that in the *Collingwood* case the Board had the complete confidence that, as a result of the availability of arbitration, the discharges in question would clearly be subject to adjudicative review. And while such a review *may* be the result of the interest board proceedings, there is no corresponding certainty in the present case. Recourse to and reliance upon the duty of fair representation is no substitute for access to arbitration *and* the benefit of the duty of fair representation available to the discharged employees in the *Collingwood* case.

14. There are, however, more significant reasons why it would be inappropriate to dismiss the application at this stage of the proceedings.

15. The interests, issues, and public policy concerns associated with the Board and interest arbitration proceedings are quite different. For example, while there is obviously some potential overlap or duplication in relation to the practical result, the question of whether a collective agreement ought to include terms requiring the return of machinery to the plant is quite different from the question of whether the removal of such equipment constitutes an unlawful lockout or other violation of the Act.

16. Similarly, the question of whether the discharges at issue can be supported against a standard of just cause is quite distinguishable from whether the same discharges are in violation of the "freeze" or other provisions of the Act. (In that regard it is significant to underscore that this Board has already determined that, in relation to the proceedings before this Board, there is no statutory basis for requiring this employer to justify the termination on either a just cause or cause standard *per se*.)

17. Neither am I persuaded that the union ought to be treated as having made its election. In this regard the provisions of the Act may be usefully distinguished from, section 50(2) of the *Occupational Health & Safety Act* (the "OHSA") which imposes a statutory right or obligation to elect as between arbitration and an application to this Board in relation to alleged violations of the OHSA. There is no such corresponding requirement in the Act.

18. The interest board is charged with settling the terms of the first collective agreement. This Board, more broadly speaking, is charged with administering and enforcing the protections of the Act. As employer counsel conceded, the interest board will not be charged with determining whether there have been violations of the Act.

19. In all of these circumstances I am satisfied that this Board has the jurisdiction to continue its inquiry into these matters. Neither am I persuaded that the Board ought to exercise whatever discretionary power it may have to dismiss this application at this stage of the proceedings.

20. The employer's motion is therefore dismissed.

21. However, having dismissed that motion I am equally persuaded that the dictates of some measure of rationality as well as concerns about sensible allocation of resources make it inadvisable to proceed with this matter now.

22. The award of the interest board may have significant impact on the present proceedings. It is not difficult to contemplate a range of possibilities. Not least among these is that some or all of the issues may be rendered moot. The interest board's award may otherwise significantly impact on the parties' appetites to continue the present proceedings.

23. In these circumstances and given the time frames involved, I am satisfied that it makes sense to defer any further reconsideration of the merits of this application.

24. I am advised that the interest board will likely conclude its hearings on December 10, 1997. This matter is scheduled to continue on January, 26, 27, and 28, 1998. It may well be that the results of the interest arbitration may be known to the parties at that time. Alternatively, the interest board may, in the circumstances, opt to insure that its decision, at least with respect to the issues which relate to the present application, is released to the parties in advance of the January 26 continuation date.

25. This matter is hereby adjourned until January 26, 1998. Although I have dismissed the employer's motion, such dismissal is, of course, without prejudice to the employer's right to argue how the Board ought or ought not to proceed in view of whatever the award of the interest board may be.

26. The parties are directed to advise the Board as to the status of this matter not later than January 22, 1998.

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**1838-96-FC Labourers' International Union of North America, Local 1059, Applicant v. Ingersoll Plastics Inc., Responding Party v. David Pentland, Intervenor**

**First Contract Arbitration - Practice and Procedure - Termination - On first day of hearing into union's application for first contract arbitration, employer advising that it was prepared to sign proposed collective agreement included in union's application - Employer asking Board to dismiss union's application for first contract arbitration - Union claiming, inter alia, that proposed collective agreement included in its application was not an "offer" as such, that it had evaporated over the 5-month period from the date that it had been filed, and had been extinguished by the filing of a termination application by employees - Board deciding that it ought to determine whether "process of collective bargaining has been unsuccessful" in context**



**of all of the evidence - Board declining to adjourn or dismiss union's application at preliminary stage**

**BEFORE:** *Russell G. Goodfellow*, Vice-Chair, and Board Members *J. A. Rundle* and *H. Peacock*.

**APPEARANCES:** *Stephen Krashinsky* and *Jim MacKinnon* for the applicant; *Andrew Camman* for the responding party; *E. Dempsey* for the intervenor.

**DECISION OF RUSSELL G. GOODFELLOW, VICE-CHAIR, AND BOARD MEMBER H. PEACOCK; December 10, 1997**

1. This is an application to the Board to direct the settlement of a first collective agreement by arbitration pursuant to section 43 of the *Labour Relations Act, 1995*. Section 43 states in relevant part:

43. (1) Where the parties are unable to effect a first collective agreement and the Minister has released a notice that it is not considered advisable to appoint a conciliation board or the Minister has released the report of a conciliation board, either party may apply to the Board to direct the settlement of a first collective agreement by arbitration.

(2) The Board shall consider and make its decision on an application under subsection (1) within 30 days of receiving the application and it shall direct the settlement of a first collective agreement by arbitration where, irrespective of whether section 17 has been contravened, if it appears to the Board that the process of collective bargaining has been unsuccessful because of,

- (a) the refusal of the employer to recognize the bargaining authority of the trade union;
- (b) the uncompromising nature of any bargaining position adopted by the respondent without reasonable justification;
- (c) the failure of the respondent to make reasonable or expeditious efforts to conclude a collective agreement; or
- (d) any other reason the Board considers relevant.

Also pending is an application for termination of bargaining rights. Pursuant to a decision of a differently constituted panel of the Board, the termination application was held in abeyance pending the disposition of the first contract application. It is common ground between the parties that if the first contract application is granted, the termination application must be dismissed: see subsection 43(23).

2. The application was filed on September 25, 1996 and came on for hearing before this panel on August 11, 1997. At that time a number of preliminary issues were addressed including a request by the applicant in the termination application for intervenor status in these proceedings. The Board granted that request and, on August 12, intended to rule on an outstanding evidentiary issue before hearing the merits of the case. At the commencement of that day of hearing, however, counsel for the responding party advised the panel that it was now willing to sign, "without exception", the "proposed collective agreement that the applicant [was] prepared to sign" when it filed its updated application on March 4, 1997. The requirement for a first contract applicant to file such a document comes from Rule 67, which states:

67. An application for first contract arbitration under section [43] of the Act must also include:

- (a) the date of the certificate or voluntary recognition agreement;
- (b) a detailed description of the bargaining unit affected by the application;

- (c) the approximate number of employees in the bargaining unit;
- (d) the name, address, facsimile number, if any, and telephone number of the primary negotiator for the applicant;
- (e) the date of the no-board report;
- (f) the dates on which negotiations were held or scheduled to be held;
- (g) a list of all documents on which the applicant intends to rely;
- (h) a copy of those documents, if the applicant has them;
- (i) a list of all those bargaining issues agreed upon in writing and a list of those bargaining issues that remain in dispute; and
- (j) **a copy of a proposed collective agreement that the applicant is prepared to sign.**

[emphasis added]

3. In view of its position, the responding party asked the Board to dismiss the application. This request was supported by the intervenor and resisted by the applicant. The applicant took the position that the only context in which the document that it had filed in accordance with Rule 67 could be accepted, if at all, was as part of a first contract direction. When counsel for the applicant sought clarification from counsel for the responding party as to whether the responding party would be prepared to sign the proposed agreement on those terms, responding party counsel demurred, taking the position that the application must be dismissed because the parties had reached an agreement. Counsel for the applicant replied that the only reason that the responding party was taking this position was because of its desire to see the termination application revived and its confidence that the application would now succeed. Counsel for the applicant candidly admitted that the applicant, too, was concerned about its prospects for success in the termination application, some one and one half years after it had been certified, and wished the first contract application to proceed to a hearing on the merits. After hearing these brief representations, the Board advised the parties of a very recent decision dealing with a similar issue and afforded them 24 hours to review that decision and prepare more detailed submissions.

4. The Board then heard those submissions on August 13 and summarizes them now as follows. The responding party focused on the primacy of free collective bargaining and the exceptional nature of the first contract provisions. The responding party asserted that the first contract provisions are not intended to replace the “hard work” of collective bargaining and that it is only where “the process of collective bargaining has been unsuccessful” that the provision applies: see subsection 43(2). In this case, the responding party submitted, its willingness to accept the applicant’s proposed collective agreement means, both, that “collective bargaining has not been unsuccessful” within the meaning of subsection 43(2) and that the parties have been able “to effect a first collective agreement” within the meaning of subsection 43(1). The responding party asserted that it would make no “labour relations sense” to require it to defend, at great cost, a first contract application when it was now willing to accede to all of the union’s collective bargaining demands. The responding party submitted that the case is on all fours with the Board’s recent decision in *Native Child and Family Services of Toronto*, Board File Nos. 3999-96-FC and 0052-97-R, released July 29, 1997 [reported *infra* at p. 1032], in which the Board found that the employer’s signature on the document submitted by the union in accordance with Rule 67 meant that the parties had reached a “proposed collective agreement” and that the agreement had to be submitted to a ratification vote. Although the Board merely adjourned the application in *Native Child*, in this case the responding party asked that the application be dismissed.

5. Both the responding party and the intervenor argued, further, that the *only* reason that the applicant could now wish to proceed with the first contract application was to try to avoid a negative vote in the termination application. Both parties alleged that this constituted bad faith and an abuse of the Board's processes. The intervenor submitted that the approach that the Board should adopt in cases of this kind is one that would promote negotiated, rather than arbitrated, settlements.

6. Many of the arguments advanced by the applicant were first presented in *Native Child* and can be examined more fully in the context of that decision. Suffice it to say that the applicant took the position that *Native Child* was wrongly decided and, in any event, that it was distinguishable on its facts. Fundamentally, the applicant submitted that the responding party ought not to be allowed to profit from its own wrongdoing by delaying the signing of a proposed collective agreement until after a termination application has become timely and the trade union's support in the bargaining unit has predictably eroded. Characterizing the employers' conduct in *Native Child* and in this case as the "next thing", counsel for the applicant submitted that this was precisely the kind of employer behaviour that the first contract provision was designed to avoid. The applicant referred to the lengthy history of the application, which was filed on September 25, 1996, and attributed the reasons for the delay to the conduct of the employer. Counsel asked, rhetorically, if the applicant's proposed collective agreement was so attractive to the employer why was it not accepted five months ago and/or if the employer's only real concern is with the cost of litigation why would it not simply consent to a first contract direction and agree that the proposed collective agreement form the terms and conditions of employment. Counsel submitted that the answer can only be because of the employer's desire to see the termination application proceed and a vote held among the bargaining unit before employees can ever taste the fruits of their original choice in favour of collective bargaining. Counsel submitted that this alone is a sufficient basis for denying the responding party's request.

7. However, counsel added that what the applicant was required to file in accordance with Rule 67 was not an "offer" to the responding party in collective bargaining but a desired outcome of a first contract application. The difference, according to the applicant, is between a litigated settlement and a negotiated collective agreement. In the alternative, if such a proposal were to be construed as an "offer" made in the course of collective bargaining, the applicant submitted that it had (a) been rejected by the filing of the response and/or the responding party's subsequent filing of its own proposed collective agreement; (b) evaporated over the period of five months from the date on which it was filed; and/or (c) been extinguished by the filing of the termination application. Seeking to locate itself within the language of the *Native Child* decision, the applicant characterized the last two factors as "meaningful collective bargaining or litigation events" which have produced a change in circumstances.

8. In response, the responding party asserted that its reasons for accepting the union's proposed collective agreement at this date have nothing to do with the filing of the termination application and everything to do with its financial capacity, as a small employer, to continue to defend this application. If this were not the case, and the real stimulus was the filing of the termination application on April 14, 1997, it would not have waited until August 12 to accept the applicant's proposal. Counsel for the responding party characterized as "bizarro world" the spectre of an employer being required to litigate the question of whether the Board should direct the settlement of a first collective agreement by arbitration when it is willing to agree to all of the union's collective bargaining demands. Further, and in any event, both the responding party and the intervenor stressed that the "process of collective bargaining" had worked - the parties have now reached an agreement - and there is no longer any basis upon which the application can proceed.

9. In considering the parties' submissions, the Board wishes to be clear about a number of points. First, apart from the circumstances set out in subsection 44(2) a positive ratification vote is



required before a “proposed collective agreement that is entered into” or a “memorandum of settlement that is concluded” can take “effect” as a “collective agreement” under the Act. Section 44 states:

44. (1) A proposed collective agreement that is entered into or memorandum of settlement that is concluded on or after the day on which this section comes into force has no effect until it is ratified as described in subsection (3).

(2) Subsection (1) does not apply with respect to a collective agreement,

- (a) imposed by order of the Board or settled by arbitration;
- (b) that reflects an offer accepted by a vote held under section 41 or subsection 42(1); or
- (c) that applies to employees in the construction industry.

(3) A proposed collective agreement or memorandum of settlement is ratified if a vote is taken in accordance with subsections 79(7) to (9) and more than 50 per cent of those voting vote in favour of ratifying the agreement or memorandum.

The idea of a “proposed collective agreement that is entered into” is a recent statutory creation given birth by the ratification requirement set out in section 44. It has no pre-Bill 7 analog and appears to exist solely as a conceptual device to facilitate the new ratification provision. Having said that, however, it is clear from the language of subsection 43(1) that it is the absence of a “collective agreement” (and the presence of the other conditions set out therein), and not the absence of a “*proposed* collective agreement”, that grounds the Board’s jurisdiction in a first contract application. As there was no suggestion in this case that any of the events outlined in subsection 44(2) had yet occurred, there is no basis for concluding that the parties have reached a “collective agreement” or that the Board’s jurisdiction under subsection 43(1) has disappeared. The further question of whether “the process of collective bargaining has been unsuccessful” (as the applicant must show in order to succeed in a first contract application) is an issue that would ordinarily be addressed as part of the merits of the case.

10. Second, although both parties accused each other of delay, abuse of process, and bad faith bargaining, most of the facts upon which these allegations are based are not yet before the Board. What is clear from the record, however, is that the original hearing date was set within 30 days of the application filing date, that date was adjourned on agreement between the parties, further attempts at reaching a proposed collective agreement proved fruitless, those further attempts are alleged by the union to constitute additional grounds for a first contract direction, the union asked the Board to re-list the matter for hearing, some additional delay arose in having a hearing date set, the date subsequently set was adjourned by the Board over the union’s objection, and this is the fifth Board decision in the application and the second appearance by the parties before a panel of the Board scheduled to deal with the merits of the application. While it may be possible to draw some limited inferences from these events as to the strengths and weaknesses of the parties competing assertions of impropriety, the Board is unwilling to do so at this time.

11. Third, what the responding party is asking the Board to do, at this stage, is to dismiss the application for a first contract direction rather than adjourn it as was done in *Native Child*. Where that would leave the parties is somewhat unclear and was not the subject of any express submissions. However, it appeared to be implicit in the responding party’s submissions (that the Board should follow the *Native Child* decision) that the parties should be deemed to have reached a “proposed collective agreement” and that the Board should direct the holding of a ratification vote.

12. Fourth, and while not explicit in the submissions of counsel for the applicant, it may be the case that there is no longer a collective agreement that the applicant is prepared to sign except one

which is accompanied by a first contract direction. At the same time, however, it appears equally clear that the responding party's willingness to sign the proposed collective agreement that the applicant submitted in accordance with Rule 67 is not entirely unconditional. In particular, the responding party is not prepared to sign that proposal unless the first contract application is dismissed. In the result, it appears to the Board that there may be considerable scope for the assertion that both the employer and the union are now more concerned about the disposition of the termination application than they are about concluding, or living with, a first collective agreement.

13. Fifth, despite the free-flowing accusations of *mala fides*, neither party has filed a section 17 application; the applicant has not alleged that the responding party initiated the termination application; and the responding party has not applied for a final offer vote. Any one of these courses of conduct may have helped to clarify the labour relations context and/or assisted the Board in fashioning the appropriate remedies.

14. In view of all of the foregoing, a majority of this panel finds itself unable to dismiss the first contract application at this time and can see no reason to adjourn the proceedings. As indicated above, the statutory preconditions to a first contract application have been met: the parties have not effected a "collective agreement" and a no-Board report has issued. As such, and assuming that the applicant has also met the procedural requirements imposed by the Board's Rules (and we note that the responding party and intervenor have not suggested otherwise), the applicant would seem to be entitled to a hearing on the merits. Indeed, and without wishing to appear unduly technical, there is a very real argument to be made (and the applicant made it) that this is not a matter of Board discretion but of statutory compulsion. In contrast, for example, to the discretionary language of subsection 96(4) (the Board "may inquire into the complaint" of an unfair labour practice) subsection 43(2) provides that the Board "shall consider and make its decision on an application under subsection (1) within 30 days of receiving the application..."

15. Notwithstanding the apparently mandatory nature of the provision, however, it may be argued that it is up to the Board to determine how and in what sequence the relevant issues will be addressed. Among the issues to be decided in this case, it would appear, is whether the process of collective bargaining has been unsuccessful not because of the reasons listed in paragraphs 43(2)(a)-(d) but at all. In other words, whether the employer's offer to execute the union's proposed collective agreement means that "the process of collective bargaining has [not] been unsuccessful". That being the case, it might then be argued that this is an issue that can be usefully addressed, either with or without the calling of evidence, at this time.

16. Assuming that the Board has the jurisdiction to proceed in that fashion (i.e. to segregate the question of whether the process of collective bargaining has been unsuccessful from the balance of the provision), that is not an approach that we are inclined to adopt here. In our view, the question of whether "the process of collective bargaining has been unsuccessful" is an issue that cannot be decided, as the employer and intervenor would have it, solely by reference to the employer's offer to accept the union's proposed collective agreement. The process of collective bargaining has a statutorily mandated good faith element to it and we are unable to say categorically, and as a matter of law, that the circumstances leading up to or surrounding the employer's offer do not matter. In other words, it is possible that the Board may conclude that notwithstanding the employer's offer to accept the union's proposal "collective bargaining has been unsuccessful". Presumably, in the face of such an offer and barring an objective change in circumstances that would cause the Board to conclude that the union's proposal was no longer extant, the circumstances that would ground such a finding would be quite serious. They may need to involve, for example, a pattern of employer behaviour that demonstrated a complete unwillingness to ever conclude a collective agreement and a manifest desire to rid itself of the union. However, this is not an issue on which the majority feels able to pronounce at this time and

we would prefer to decide this matter with the benefit of evidence and additional argument. Inasmuch as that evidence is likely to overlap considerably with the evidence that the applicant would otherwise be entitled to call in the first contract application, the Board sees no practical value in addressing this issue separately. Accordingly, the responding party's motion is dismissed.

17. Because of the view we take of the matter, however, the Board believes that it would be appropriate to hear all of the relevant evidence *up to and including* that which relates to the employer's offer to accept the union's proposal on the last day of hearing. To the extent that any party disagrees with this approach, they must notify the Board forthwith and provide reasons for their position. Upon receipt of any such submissions, the Board may decide the issue immediately or determine what further steps will be taken.

18. Finally, we wish to advise the parties that we will not inquire into any of the allegations raised in paragraphs 1 through 8 of the material facts set out in the intervention or into any of the allegations set out in the document entitled "additional facts on which the applicant for intervenor status shall rely". In our view, these matters are not relevant to the issues raised in the first contract application.

#### **DECISION OF BOARD MEMBER J. A. RUNDLE; December 10, 1997**

1. It is unfortunate that within a very short period of time the Board will have issued two diametrically opposed decisions on essentially the same issue. The effect of which creates uncertainty in the labour relations community as to how the Board will deal with these matters. I refer of course to the *Native Child and Family Services of Toronto*, Board File Nos. 3999-96-FC and 0052-97-R which was a unanimous ruling of the Board (differently constituted) and the present majority decision.

2. In order to appreciate the issues in context the following facts are helpful and must be kept in mind when reading the majority decision and the dissent.

- there are approximately 8 employees in the bargaining unit.
- the applicant was certified in April 1996.
- the first contract application was filed in September 1996.
- the application was adjourned *sine die* on agreement in September 1996.
- the applicant requested the matter be relisted for hearing March 1997.
- a timely termination application was filed April 1997.
- the trade union has *not* filed s. 17 and s. 96 complaints.
  - bargaining in bad faith charges.
  - allegations of employer misconduct around the termination application s. 63(16).
- a majority of a panel of the Board - differently constituted - decided that the first contract application should proceed prior to the termination application.

3. It is a fundamental tenet of contract law that once an offer is made by one party, and the acceptance of that offer is communicated by the other party, a binding contract in law is formed between



the parties. There is no difference to that fundamental principle in its application to matters of labour law, generally, and in the context of a first contract application specifically.

4. In my opinion, the decision of my colleagues in this case, errs in its application of basic contract law; and undermines what, to my mind is a primary purpose underlying section 43 of the *Labour Relations Act*; namely the desire to bring the parties closer together in what is sometimes the difficult process of forming a first collective agreement.

5. As a matter of substantive contract law, we have in this case an unequivocal offer, in writing, made by the union, and an unequivocal acceptance of that offer by the employer. As part of its application to the Board, the union was required by the Board's own rules of procedure to submit a copy of a proposed collective agreement that it was prepared to sign. An offer is an offer and should remain valid, outstanding and eminently signable in the context of the negotiations and application. Indeed its ongoing validity is requisite to protect the applicant from a charge of *mala fides* in the negotiations. The majority acknowledges in paragraph 13 of the decision that an allegation of *mala fides* is indeed possible, but has not been filed. The requirement to file a proposed collective agreement the union was prepared to sign constituted a clear offer by the union on all matters related to the settlement of the collective agreement which, as was the case here, the employer was able to accept at any time before the offer was either withdrawn by the union (if that were to be allowed) or before the Board had finally disposed of the application. As a matter of contract law, it is my view that once the offer of the union was accepted by the employer, that became the end of the matter and the Board must dismiss the section 43 application; since as a matter of law there would then be a proposed collective agreement in place between the parties leaving nothing for the Board to deal with under section 43 of the Act and the process of collective bargaining could not be said to be unsuccessful.

6. If it is the absence of a collective agreement that grounds the Board's jurisdiction, then that jurisdiction has been vacated by the employer's acceptance of the proposed agreement contained in the union's materials. Section 44 provides that the proposed agreement has no effect until it has been ratified (unless otherwise ordered by the Board; this "otherwise" is of no consequence in our situation). The employer's acceptance of the agreement negates the precondition at the beginning of section 43(1) ("When parties are unable to effect a first collective agreement..."). Similarly it does not require the Board to exercise its section 44(2) powers to impose an agreement. That leaves the operation of section 44(1) ("A proposed collective agreement that is entered into ... has no effect until it is ratified ..."), and the only issue left is for the union, if it so desires, to arrange a ratification vote.

7. Almost as important, however, is the very serious policy and practical issue of allowing one party, in this case the applicant union, to, in effect, withdrawing its "offer" as set out in the proposed collective agreement that it said it was prepared to sign prior to the commencement of the hearing on the merits, even *after* the employer has accepted that offer. In my opinion, to permit this to occur completely undermines the integrity of the Board's own process, and makes a mockery of the Board's rules of procedure which are supposed to engender certainty and predictability in the labour relations community. One wonders if the response would be the same were the parties positions reversed.

8. Also, it has always been my understanding that since the obligation of the parties to bargain in good faith continues notwithstanding an application by one party under section 43 of the Act, in my view it would be inconsistent with that obligation to permit any party, in this case the applicant union, to withdraw an unequivocal written offer *after* its acceptance by the employer. In the context of bargaining between these parties, such conduct would be construed as bargaining in bad faith to which the majority of this Board gives its tacit approval by ruling as it has in this case.

9. In my view, the circumstances in this case fall precisely within the principles enunciated by *Native Child & Family Services of Toronto*, Board File Nos. 3999-96-FC and 0052-97-R, and to the

extent that the majority of this Board has refused to follow the decision in *Native Child*, that refusal can only further undermine the integrity of the Board's own procedures and add uncertainty and confusion in the labour relations community. Indeed, the message that the majority of this panel is sending to the community is that, when it comes to an application under section 43 of the *Act*, neither party can assume with any certainty that the collective agreement which a party might proffer as the collective agreement it is prepared to sign, as directed by the Board's rules, is in fact of any binding consequence. Thus parties, faced with such uncertainty would wisely consider "holding back" with their "best offer" in response; leading, of course, to the likely protraction of these types of proceedings to the benefit of no one. An unfortunate outcome given the length of time this section has been in the statute and the manner in which the parties have in the past governed their actions as per the requirements of the statute and the Board's own rules in first contract application.

10. The description of the applicant's document as a "desired outcome" elevates it beyond the parameters of a mere "offer". The latter anticipates some give-and-take and is presented as a first volley in what traditionally could be a protracted eventual meeting of minds. A "desired outcome" on the other hand, is more akin to a wish list, and entails the best possible results the offer or could ever hope for.

11. What the majority of the Board is in effect saying to applicants in such circumstances is: if you play your cards in the bargaining game and lose, you can expect the Board to come to your assistance. The Union having played the first contract arbitration card, and having filed the collective agreement that it said it was prepared to sign, should be required to play by the rules of the game to the end; which includes the obligation to accept the very contract that it, the union has proposed. To permit the Union to resile from its own proposal, which is, in effect to change the rules in the middle of the process, only brings the Board's own procedures into disrepute.

12. A very technical argument was made and seemingly adopted by the majority that section 43(1) has a mandatory element to it therefore the Board must hear this matter. That the union in this case is allowed to use the provisions of Sec. 43 as a sword in order to obtain a first contract direction then when the union is confronted with a proposed collective agreement that encompasses even on the union's description, their "desired outcome" it is allowed to use the same section as a shield to *deflect* the obvious, is inappropriate given the Board's jurisprudence and practice. For the majority—in light of the Board's jurisprudence and the Board's practices to give substance to this argument is to say the least interesting. Particularly when the Board dealt with the mandatory element of this section in *Del Equipment Limited*, [1989] OLRB Rep. Jan. 19.

13. In my view the *only* reason that the majority of this panel has chosen to disregard the employer's application to dismiss this case, in light of the lack of charges, is the pending decertification application by a group of employees. That is not a valid reason. The notion that the Board ought (or indeed has the authority) to "look behind" the decision of the employer to accept without modification the clear contract offer by the Union, is in my view a completely irrelevant exercise. Once there has been an offer and an acceptance of that offer a contract has been formed and, from the Board's perspective in an application under section 43 of the *Act*, that is the end of the matter.

14. Those familiar with the process of collective bargaining understand that during the course of bargaining, the parties engage in a series of strategic moves, some of which in the long term may be more successful than others. Absent allegations of violations of the *Labour Relations Act* - this Board has no business or jurisdiction looking behind those strategic moves.

15. The majority award appears to indicate the Board is revisiting its approach to s. 43 of the LRA. In light of this new direction, respondents should:

- decline to agree to any adjournment requests once a s. 43 application has been filed.
- decline to continue bargaining after the application has been filed. The Board cannot require a party to engage in a process the results of which may found by the Board to be prejudicial to them.
- decline to file a proposed collective agreement they are prepared to sign as the Board places no importance on that document.

16. The majority ruling in this case is part of the continuing quest to push the law in new directions as opposed to a showing of deference to the Board's existing caselaw and the perceived legislative intent. It sets new parameters, I would suggest, that were never contemplated by the Board under section 43 and which can only serve to polarize the way parties approach first contract applications.

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**4077-95-U; 1992-96-U** Power Workers' Union - Canadian Union of Public Employees, Local 1000 ("PWU") and J. Caskanette, G.D. Chaffey, M.D. Collins, L. Crausen, H.R. Gillies, R.C. Hansen, G. O'Donnell, J. Stark, R. Thoms, H. Tomsett and R.R. Young, Applicants v. **International Brotherhood of Electrical Workers** in its own right and as trustee of International Brotherhood of Electrical Workers, Local 1788, Ken Woods, Allan Diggon, Tom McGreevy, Ontario Hydro and Electrical Power Systems Construction Association ("EPSCA"), Responding Parties v. The IBEW Electrical Power Systems Construction Council of Ontario ("IBEW-EPSCCO"), Intervenor; International Brotherhood of Electrical Workers Local Union 1788 ("IBEW, Local 1788"), Applicant v. International Brotherhood of Electrical Workers, Ken Woods, Allan Diggon and Jim Seaton, Responding Parties v. The IBEW Electrical Power Systems Construction Council of Ontario ("IBEW-EPSCCO"), and Electrical Power Systems Construction Association ("EPSCA"), Intervenor

**Construction Industry - Unfair Labour Practice - Natural Justice - Applicant asking vice-chair to disqualify himself on grounds of alleged reasonable apprehension of bias - Applicant relying on a series of decisions issued by vice-chair over previous four years which were decided against Applicant - Applicant's request dismissed**

**BEFORE:** *G. T. Surdykowski*, Vice-Chair.

**APPEARANCES:** *L. A. Richmond* for Power Workers' Union - Canadian Union of Public Employees, Local 1000; *L. A. Richmond, H. Tomsett* and *J. McDermott* for IBEW Local 1788; *Rob Little* for Ontario Hydro and Electrical Power Systems Construction Association; *David McKee* and *Ken Woods* for International Brotherhood of Electrical Workers, *Ken Woods* and *Tom McGreevy*; *David McKee, Allan Diggon* and *Jim Seaton* for Allan Diggon and Jim Seaton; *A. M. Minsky* and *John Pender* for IBEW Electrical Power Systems Construction Council of Ontario.

**DECISION OF THE BOARD;** November 4, 1997



1. These unfair labour practice complaints were scheduled to be heard beginning on September 16, 1997. In the case of Board File No. 4077-95-U, this was a continuation in the sense that one of the issues raised in that complaint has already been heard and disposed of (by decision dated September 30, 1996, reported at [1996] OLRB Rep. Sept./Oct. 821). Board File No. 1992-96-U is a newer complaint which had been scheduled to come on for hearing at the same time so that the parties could address the question of how it should proceed, if at all.

2. By endorsement dated September 17, 1997, I dismissed the applicants' request that I disqualify myself from having anything further to do with these complaints.

3. After the hearing was convened, but before it began, the applicants (all of them) requested that I disqualify or otherwise excuse myself from hearing these matters because of what they asserted was a reasonable apprehension of bias arising out of what counsel described as my long-term involvement in what he characterized as "the dispute" between IBEW Local 1788 and its members, supported by the PWU, on one hand, and the IBEW International, the other IBEW construction entities (i.e. the Council and other local unions) and Ontario Hydro on the other; and out of decisions which I have issued in the various matters I have heard in that respect. Mr. Richmond stated that his clients believe that I have chosen sides, that I have arrived at a conclusion regarding how "the dispute" should ultimately be resolved, and that I therefor cannot impartially adjudicate these complaints. Although counsel characterized the issue being raised as one of a "reasonable apprehension of bias", and notwithstanding that Mr. Richmond was quick to indicate that what was being asserted was a natural consequence of my involvement in the various matters as a "thinking adjudicator", it was apparent that "actual bias" was also being alleged.

4. The applicants submitted that they are entitled to an impartial adjudication of their complaints. They argued that they are entitled to a "sustained confidence in the independence of mind of those who sit in judgment of them", and presumably of their cause. They submitted that a reasonably informed bystander would perceive or apprehend bias on my part.

5. In that respect, the applicants pointed to the context of these complaints, which they say goes back some four years. They asserted that with the exception of a telephone conference in one matter, I have been the only Vice-Chair to have been given authority to decide any significant matters in the overall dispute, and that I appear to have acquired a kind of property right over the dispute and become the "Czar" of what is primarily an IBEW internal dispute; something which they submitted is unprecedented. Although the applicants did not ascribe any personal blame to me, they asserted that the resulting situation is an untenable one, both for me and for them, and which demonstrates why no one Vice-Chair should control the entire destiny of a "single struggle".

6. The applicants also asserted that the decisions which I have issued in this "single struggle" to date demonstrate a bias against their position(s) and indicate that I have predetermined the result of these complaints. Indeed, counsel specifically asserted that these complaints: "would simply be an opportunity for you to restate what you have found - no matter what the arguments or evidence presented". In that respect, the applicants pointed to paragraph 93 of my February 9, 1996 decision in *International Brotherhood of Electrical Workers* [1996] OLRB Rep. Feb. 70 (in Board File No. 4151-93-U), paragraphs 70 and 72 of my February 27, 1997 decision in *Ontario Hydro* [1997] OLRB Rep. Jan./Feb. 82 (in Board File Nos. 0164-94-R, 0186-95-R, 0187-95-R and 0251-95-R), the decision which has already issued in Board File No. 4077-95-U herein dated September 30, 1996 (reported as *International Brotherhood of Electrical Workers* [1996] OLRB Rep. Sept./Oct. 821, my decision dated October 11, 1996 in Board File No. 0856-96-M (reported as *International Brotherhood of Electrical Workers* [1996] OLRB Rep. Sept./Oct. 826), and the last sentence of paragraph 20 in my unreported

decision dated October 5, 1995 in Board File No. 2161-95-M. The applicants asserted that the undeniable consistent theme of these decisions is that I have decided that the members of IBEW Local 1788 are to have no say about their collective bargaining future, and that where a balancing of interests is necessary, IBEW Local 1788, and more importantly its members, will lose.

7. The applicants submitted that through no fault of my own I have been placed in a situation which I should remove myself from, and give some other Vice-Chair an “opportunity” to take a fresh look at the matter. Counsel suggested that if I had any doubts concerning my ability to continue with these matters, I should resolve them in favour of granting the motion and stepping down.

8. In argument counsel for the applicants referred to *Newfoundland Telephone Co. v. Board of Commissioners of Public Utilities* (1992) 89 D.L.R. (4th) 289 (Supreme Court of Canada); *Regina v. Board of Arbitration Ex parte Cumberland Railway Co.* (1968) 67 D.L.R. (2nd) 135 (Nova Scotia Court of Appeal); *Huerto v. College of Physicians and Surgeons* (1994) 117 D.L.R. (4th) 129 (Saskatchewan Queens Bench) and (1996) 133 D.L.R. (4th) 100 (Saskatchewan Court of Appeal); *Re: Batorski and Moody* (1983) 150 D.L.R. (3rd) 114; *Zundel v. Canada (Minister of Citizenship & Immigration)* (1996) 138 D.L.R. 412 (Federal Court, Trial Division); and *Matsqui Indian Band v. Canadian Pacific Ltd.* (1995) 122 D.L.R. (4th) 129 (Supreme Court of Canada).

9. The other parties all opposed the applicants’ motion. They submitted that there was no factual or legal support for the motion. In essence, they submitted that there was nothing which suggested that I had not, could not or would not impartially dispose of any of the various pieces of litigation between or involving the parties which I have been, am or may be assigned to hear on the basis of the relevant evidence and considerations. They pointed out that I have not been assigned to every piece of litigation in what they at least implicitly agreed was a single evolving struggle which is substantially an internal IBEW conflict, but which also directly affects non-IBEW parties such as those herein. They submitted that the extent of my involvement in what is essentially a single matter is not unprecedented, either at the Board or elsewhere. They characterized the applicants’ motion as “sour grapes”, and submitted that what was being urged upon me was an inappropriate “score card” approach to the assignment of Vice-Chairs. The parties opposite to the applicants suggested that what the applicants really wanted was to be allowed to do some “Vice-Chair shopping”, and asked the rhetorical questions: “What happens when a party has had preliminary, procedural, or evidentiary rulings consistently made against it, or which perceives a Vice-Chair to be responding in a negative manner to its case? Does this raise a question of actual or apprehended bias”?

10. Further, the parties opposite submitted that it is sensible and efficient to assign a single Vice-Chair to what is essentially a single matter.

11. Finally, the other parties submitted that there was nothing in any of the decisions which I have issued which predicts the result in the complaints herein, and in that respect they point out that the applicants have failed to make any connection between the decisions they referred to and the issues in these complaints.

12. Alleging that an adjudicator is biased, or that there is a reasonable apprehension that s/he is biased, is a very serious matter. It is an allegation which must not be made lightly. I was satisfied that the applicants’ motion in that respect in this case was seriously made, with due regard to the gravity of the issue. However, having carefully considered the motion, I was satisfied that I have not demonstrated any actual bias, and that I am not biased against the applicants (or anyone else) in these proceedings. I was also satisfied that whatever the subjective feelings of any of the litigants or their supporters, there is no objective reasonable apprehension that I am biased. Finally, I was satisfied that it is otherwise neither necessary nor appropriate for me to “step down” or decline to hear these complaints.

13. I did not consider the question of the timing of or any delay in bringing this motion to be significant or relevant. If bias has just come into being, or has just been apprehended, the issue is properly raised at that time. Assuming that delay could be a relevant consideration, and even if the alleged bias was or could reasonably have been apprehended earlier, I considered it appropriate in the circumstances to discount it entirely and to deal with the motion on its merits.

14. The applicants' allegations of bias were based entirely on the degree of my involvement in the various proceedings to date, and the decisions which I have issued to date.

15. The following is a list by file number of cases, in addition to the ones herein, which appear on their face to directly or indirectly relate to "the single dispute" that these proceedings relate to, together with the Vice-Chairs who have been assigned to or who have had dealings with them:

0163-96-M: Herman, *Surdykowski*  
 0164-95-R: Stamp, *Surdykowski*  
 0186-95-R: Stamp, *Surdykowski*  
 0187-95-R: Stamp, *Surdykowski*  
 0251-95-R: Stamp, *Surdykowski*  
 0480-96-U: Bloch, Herman  
 0540-95-U: Hewitt, Stamp  
 0856-96-M: *Surdykowski*  
 1031-96-U: Bloch, Herman  
 1183-95-U: Bloch, MacDowell  
 1319-95-U: MacDowell  
 2160-95-U: Herman, Trachuk  
 2161-95-M: *Surdykowski*  
 2717-94-U: Bloch, Shouldice, *Surdykowski*  
 3380-95-U: Nairn  
 3513-95-U: Nairn  
 3623-96-U: Bloch, *Surdykowski*  
 4100-95-U: *Surdykowski*  
 4103-95-U: Bloch  
 4151-93-U: *Surdykowski*  
 4225-95-T: Shouldice, *Surdykowski*  
 4305-96-T: Bloch, *Surdykowski*  
 4396-94-U: Chapman, MacDowell  
 4397-94-M: Chapman, MacDowell  
 4456-94-U: Trachuk

16. This list is likely incomplete, and it may be that some of the matters on it have only a remote connection to the "single struggle". However, the list does serve to illustrate that while I am far from the only Vice-Chair assigned to cases involving the applicants and "the single dispute", my name does come up relatively often. On the other hand, so do the names of several other Vice-Chairs.

17. I assumed that all of the various proceedings have been important to the parties. However, I also accepted that some have been more significant than others, and, for purposes of the applicants' bias allegations, I assumed that the five proceedings specifically identified by them, and my decisions in them, have been the most significant ones from their perspective.

18. The first decision was in Board File No. 4151-93-U, issued on February 9, 1996. This was an unfair labour practice complaint by IBEW Local 1788 in which it alleged that the IBEW International had altered its jurisdiction and interfered with its autonomy without just cause, contrary to what are



commonly referred to as the “Bill 80” provisions of the Act. This matter was entirely concerned with construction industry labour relations. The Act has long contemplated, indeed it has directed, that the Board have a construction industry division (sub-section 110(5) of the current Act). The Board has in fact long had such a division. I am a “construction Vice-Chair” (as are many of the other Vice-Chairs whose names appear in the list in paragraph 15, above). I note that although I actually wrote this particular decision, it is a unanimous decision of a *three person* construction industry panel of the Board. The complaint was dismissed; that is, IBEW Local 1788 lost. There was no request for reconsideration, and no one has sought judicial review.

19. The reported decision consists of 105 paragraphs covering 25 pages. The applicants pointed to a single paragraph, paragraph 93, in support of their allegations of bias. That paragraph reads as follows:

93. Nor is there any question regarding the wishes of Local 1788's members. Local 1788 has enjoyed very strong support for the position it took in the dispute which is the subject of this application from its members at all material times. In that respect, we did not understand any part of Local 1788's position to be that a jurisdictional change which is opposed by the members of the local union in question is somehow presumptively without just cause. We do not find that to be a tenable position in any event. The “wishes of the members of the local union” is just one of the four factors the Board is required to consider under section 147. Further, in the construction industry, it will be the rare case indeed in which members of a local union will want to give up jurisdiction (which in the construction industry translates into work or opportunities for work). If the Legislature had intended that members' wishes have some sort of veto effect, it could have said so. The Legislature has not said so.

20. The applicants submitted that at least in hindsight this was the first indication that I had decided I was going to give no weight to the wishes of the members of IBEW Local 1788.

21. This decision speaks for itself and must be read in its entirety. It is probably fair to say that the decision stands for the proposition that although it is a factor which must be considered, in circumstances like those established in that case, the “wishes of the members of the local union” are not likely to be given much weight because they will generally oppose the change in jurisdiction which led to the complaint. (It is probable that it is only in the unlikely event that the members supported a change in jurisdiction which the local union challenged that the “wishes” factor would be given any significant weight.) Paragraph 93 recognizes, as does the decision as a whole, how the construction industry works, particularly when it comes to matters of local union jurisdiction.

22. The second decision was in Board File 2161-95-M, an application for interim relief. Again, the matter was heard and unanimously decided (by decision dated October 4, 1995) by a full construction panel, not by me alone. The decision is 23 paragraphs (9 pages) long. The applicants point to the last sentence in paragraph 20 which reads:

At the same time, the applicants seek interim reinstatement to membership in the very trade union which they are actively seeking to leave.

23. It was not clear to me how this suggests any bias. No one has ever sought reconsideration or judicial review of the decision. No one, including the applicants, has ever suggested how or why the last sentence in paragraph 20 is either inaccurate, otherwise wrong, or inappropriate. Further, the sentence must be placed and read in context, not only of the entire paragraph 20, but the whole decision, particularly paragraphs 17 to 22:

17. The Board is satisfied that the applicants have pleaded a case which is interesting, and perhaps difficult, but nevertheless arguable. It raises questions concerning the interplay between the rights of individuals and trade unions under the *Labour Relations Act*, the manner in which a trade union may or may not react to what are perceived to be threats to it or its members, and the extent to

which the Board may or will involve itself in what may appear to be internal trade union matters. We are not prepared to say at this interim stage that there is no arguable case.

18. However, the Board is not persuaded that this is an appropriate case for granting interim relief.

19. The Board has consistently said that individual or personal harm will usually not constitute a sufficient basis for interim relief, particularly where the harm asserted in that respect is speculative or can be compensated for in damages. This is because the Board's interim relief power is a labour relations tool in a labour relations statute. As such, it is to be applied for labour relations reasons, not personal ones. Although the personal harm alleged in this case is not entirely speculative, all of it can, in our view, be compensated for in damages if the applicants succeed in their main application.

20. Nor are we persuaded that there is a sufficient labour relations basis for granting the interim relief sought. Virtually every application at the Board which posits an arguable case includes allegations that important rights under the *Labour Relations Act* have been violated or require protection. The materials before the Board describe a rather unusual situation but not one which requires interim intervention. Moreover, the applicants own materials and representations demonstrate that this is but one part of a large, complex and very acrimonious fight in which they have to varying degrees participated in a manner which has been, or has been perceived to be, contrary to various IBEW interests. Indeed, at least some of the applicants appear to be at the forefront of the attempt by the PWU to displace the IBEW Local of which they are former officers or representatives as well as members. At the same time, the applicants seek interim reinstatement to membership in the very trade union which they are actively seeking to leave.

21. We agree with the observation of counsel for the applicants that real stability will only be possible when all of the various pieces of litigation are disposed of. Having regard to the materials filed, the fact that representation votes have been taken and the ballot boxes sealed in the certification proceedings, and the fact that the hearings in the certification proceedings are scheduled to begin shortly and are expected to conclude before the end of the year, we are of the view that granting the interim relief sought is more likely to further destabilize the labour relations situation than to stabilize it.

22. In the result, the Board is not satisfied that there are good labour relations reasons to prefer the status quo described by the applicant, which is just one of several status quos which could be constructed, over the present status quo. The Board is not satisfied that the interim relief requested is necessary or appropriate.

24. The third decision chronologically is the previous decision in Board File No. 4077-95-U herein, one of the complaints herein. This time I did sit and decide the issue alone. The parties agreed and jointly requested that I determine whether a breach of section 79 of the *Labour Relations Act* was made out on the Agreed Statement of Facts which they filed. I determined that no such breach had been made out on the agreed facts.

25. The applicants alleged that the "Generation Projects" collective agreement between the IBEW-EPSCCO and the EPSCA had not been ratified as required by section 79. More specifically, the applicants alleged that the IBEW-EPSCCO was required to conduct a ratification vote of employees in accordance with sub-sections 79(7) through (9), that it had failed to do so, and that the "Generation Projects" agreement was therefor not a collective agreement for purposes of the Act. As a practical matter, most (if not all) of the employees who would have been entitled to vote would have been members of IBEW Local 1788.

26. In paragraphs 12 to 16 of my decision, I rejected the applicants' position as follows:

12. Accordingly, now as before, there is nothing in section 44, section 79, or elsewhere in the *Labour Relations Act, 1995* which requires a trade union to conduct a ratification vote with respect to a proposed collective agreement or Memorandum of Settlement which applies to *construction* employees. It is clear that the legislature intended to exclude the construction industry from the

mandatory employee ratification (and strike) vote provisions of section 44 (and subsections 79(3) and 79(4) in the case of a strike) now in the Act. This means that trade unions continue to enjoy considerable freedom in the manner in which they conduct themselves when it comes to strikes and the settling of collective agreements which relate to construction employees. This includes the right, which all unions previously had, to adopt ratification procedures which do not include an employee ratification vote. Such ratification procedures may include ratification votes of other than employees, which as a practical matter are common in the case of councils of trade unions (which are recognized as collective bargaining entities under the Act and are common in the construction industry). Indeed, it is not uncommon for negotiating committees to put things to a vote, even when they are not negotiating for a council or trade unions. There cannot be anything improper about such votes, which are clearly not subject to the provisions of subsections 79(7) through 79(9).

13. Consequently, when it comes to construction employees, a trade union is free to choose a ratification process which includes a vote which is not a vote of employees. To put it another way, the fact that a trade union chooses to hold a ratification vote with respect to a proposed collective agreement or Memorandum of Settlement which relates to construction employees does not mean that that ratification vote has to be a vote of employees. Like its predecessor provisions, subsections 79(7) through 79(9) apply to the construction industry only when a trade union decides to hold an *employee* ratification vote. If it does, then subsections 79(7) through 79(9) require the union to conduct the vote in accordance with the minimum standards established by those provisions (except in the ICI sector of the construction industry in which case section 165 governs the manner in which an employee bargaining agency or an employee bargaining agent which *chooses* to do so must conduct an employee strike ratification vote).

14. Cases like *Cuddy Food Products Ltd.* [1988] OLRB Dec. 1211 and the *T. Eaton Company Limited* [1985] OLRB Aug. 1309 (among others) deal with the conduct of a trade union which chooses to conduct an employee ratification vote, and do not stand for the proposition that every ratification vote must be a vote of employees.

15. Nor is it odd or surprising that this results in different treatment of construction and non-construction employees. For most of the history of labour relations in this province, the construction industry has been recognized as requiring different treatment. Accordingly, there has long been a “construction industry” section in the Act which has provided, as it does in the current Act, that where there is a conflict between the “general” provisions and the construction provisions of the Act, the latter will prevail in circumstances to which they apply. This is legislative recognition of the fact that while there are many similarities between the labour relations in the construction industry and the labour relations in non-construction endeavours, there are also significant differences between them.

16. In this case, the IBEW-EPSCCO decided not to have an employee ratification vote with respect to the May 23rd, 1996 Memorandum of Settlement. Instead, it decided to hold a vote of the accredited delegates of the IBEW-EPSCCO. It was entitled to do this and the provisions of sections 79(7) through 79(9) do not operate to require that the IBEW-EPSCCO hold an employee ratification vote in that respect, nor to the manner in which the IBEW-EPSCCO conducted its ratification vote. It remains to be seen whether the conduct complained of was otherwise improper.

27. The applicants alleged that this decision demonstrates my propensity to prevent the members of IBEW Local 1788 from expressing their wishes with respect to collective bargaining matters which concern them. In the decision, I dealt with a question of law which raised an issue of statutory interpretation. The wishes of persons who may be affected are not relevant to a question of law. However, the applicants in that case are seeking judicial review of this decision, and the parties may obtain the benefit of the court’s assessment of my decision in due course. To my knowledge, no allegations of bias or apprehension of bias have been made in the application for judicial review.

28. The fourth decision was in an application for interim relief made in aid of the “main application” in the complaint in Board File No. 4077-95-U herein. I sat on and determined this application alone as well. Although it was the fourth decision to be issued, it constitutes my reasons for



dismissing the application for interim relief by “bottom line” decision dated July 2, 1996 (i.e. prior to the “third decision” as aforesaid).

29. The applicants argued that demonstrates what they assert is the consistent theme in my decision; namely, that when a balancing of interest is required, they will be balanced against them. I found it interesting that the applicants conceded that I may have had “good reasons” for my decision, but nevertheless asserted that the conclusion which they draw; that is, that I am biased against them, is a reasonable one. The applicants did not request reconsideration, and to my knowledge, no application for judicial review of this decision has been filed.

30. This particular decision consists of 79 paragraphs, and the reported version is some 16 pages long. As the opening words of the single paragraph the applicants specifically pointed to (paragraph 70) suggest, it must be read in the context of the decision as a whole, and particularly paragraphs 64 to 79, which are the “guts” of the decision:

64. First, I note that this is but one more piece of an extensive litigation puzzle involving the internal workings and organization of the IBEW, its various construction Locals and the IBEW Electrical Power Systems Construction Council of Ontario (“IBEW-EPSCCO”), and the EPSCA and Ontario Hydro, a struggle in which the Power Workers Union, with whom former representatives and members of the IBEW, Local 1788 are now associated, has become involved through applications for certification in which the PWU seeks to displace IBEW Local 1788 as bargaining agent.

65. In essence, the applicants, which are the PWU and individual members of the IBEW Local 1788 who support the PWU, allege that “Ontario Hydro/EPSCA and IBEW-EPSCCO” have negotiated and entered into a collective agreement in a manner which is contrary to sections 86(2), 87(2), 79, and 149 and 74 of the Act, for purposes of this application, by destroying the seniority rights Local 1788 members have enjoyed for some 40 years. (I note that with respect to section 74, section 99(5) of the Act gives the Board a broad interim relief jurisdiction. It is not necessary to resort to the *SPPA* in that respect.) They allege that the immediate impact on the applicants is the loss of the right to bump on a province-wide basis, and to retain seniority if they are hired from the out-of-work list. They allege that the harm to the PWU is a perception that it is unable to protect its supporters.

66. Although it is not entirely clear that the applicants have a clearly arguable case on all the breaches of the Act they allege, they clearly do on some of them. Due to the disposition of this application, I find it unnecessary to delve into that question further. Suffice is to say that I consider that the applicants made out enough of an arguable case for me to address the second prong of the test which the Board has developed; that is, balancing the harm which would likely result if the orders requested are not granted on one hand, and if they were granted on the other.

67. I was not satisfied that the applicants had pointed to any actual harm which had or is about to occur. On the contrary, the harm alleged was entirely speculative.

68. Further, although the harm being alleged by the applicants had broader labour relations elements in it, it was primarily personal so far as the individual applicants are concerned. If there is one thing that is clear from the Board’s interim jurisprudence, it is that the interim power is to be used for labour relations reasons, not personal ones, however significant these may seem to be to the individuals involved. Accordingly, it will generally be inappropriate for the Board to grant interim orders with respect to personal harm issues (see, for example, *Morrison Meat Packers Ltd.* [1993] O.L.R.B. Rep. April 358). This is particularly true where, as I am satisfied is the case here, any harm which may be suffered by the individuals can be remedied if the applicants are ultimately successful. In that respect, I reject the applicants’ assertions that it will be impossible to fashion appropriate remedies for the seniority rights problems, although I do not deny that some difficulties may be presented.

69. Nor was I persuaded by the applicants “chilling effects” arguments with respect to the PWU’s applications for certification. Those applications have been made and representation votes have

been held (although the ballot boxes have been sealed pending the outcome of the litigation of various issues, which litigation has progressed much more slowly than anyone involved, including myself as the Vice-Chair seized with that litigation, would like). It is not at all clear what chilling effect, or other harm, which has not yet occurred in any event, there could be here in that respect, and it is insufficient to establish a labour relations harm which would form an appropriate basis for the interim orders sought.

70. On the other hand, I was satisfied that granting the orders sought could create significant labour relations problems for the collective bargaining parties whose conduct is challenged by the applicants, by upsetting the collective bargaining balance they have sought to achieve, and could at the same time have the same kind of negative impact on members of other IBEW Locals which the applicants complain of.

71. Finally, there is the question of delay. It may be that the delay in this case, which on the applicants' own materials is at least three weeks (from May 24, 1996 when it is alleged that IBEW Local 1788 stewards were advised that a collective agreement which have been rejected by the membership was going to be signed by the IBEW-EPSCCO, to June 17, 1996 when this application was filed), but it could be viewed as being as long as thirteen weeks having regard to the history of internal acrimony which gives context to the particular circumstances (from May 24, 1996 when a Memorandum of Settlement which allegedly contained concessions, including the stripping of seniority rights which the applicants complain of, until June 17, 1996).

72. A delay of three weeks would not have caused me to dismiss this application without considering it on its merits. Nor would it otherwise have caused me any great concern. Parties are entitled and expected to consider and formulate their positions before coming to the Board. However, I did find it appropriate to consider the longer period of thirteen weeks, when it ought to be apparent to the applicants that the matters they complained of in this interim application were a concern, as a factor in assessing the merits of the application (as the Board has done on other cases: see *William Neilsen Ltd.* [1994] O.L.R.B. Rep. March 326; *Price Club Inc.* [1993] O.L.R.B. Rep. July 635; *Morrison Meat Packers Ltd.*, supra).

73. As I already indicated above, a fundamental purpose of the *Labour Relations Act, 1995* which has remained constant throughout the legislative history of the *Labour Relations Act* in Ontario is to facilitate collective bargaining and promote the expeditious resolution of workplaces disputes.

74. Further, it is well accepted that "labour relations delayed are labour relations defeated and denied", and it is therefore important that labour relations litigation be commenced and pursued with reasonable diligence. (In that respect see the comments of Supreme Court of Canada in *Dayco (Canada) Ltd. v. CAW-Canada* [1993] 2 S.C.R. 230 at pages 306 to 307.)

75. It is particularly important that a request for interim relief be made in a timely manner. Such relief is "extraordinary" in the sense that it is relief which is given notwithstanding that there has been no hearing or decision on the merits of the case, and is relief to which the receiving party may not be entitled in the result. Accordingly, it is appropriate for the Board to take any delay in making or pursuing an application for interim orders into account when considering whether interim relief is appropriate, or when considering whether it will entertain such an application on its merits.

76. This does not mean that the party must or should come to the Board at the first sign of trouble. It is quite appropriate for a party to take some time to consider its options, and to pursue a non-litigation resolution of the dispute. It is almost inevitable that some time will pass between the time when a dispute arises and an application for an interim order is made. The question is not whether the party has delayed in coming to the Board, but rather whether there has been *undue* delay in pursuing an application to the Board.

77. In this case, history suggests that there was no reasonable prospect for any resolution between the parties. Further, the dispute involves a complex collective bargaining situation. Even at its simplest, collective bargaining is a process in which the Board is reluctant to intervene, but if intervention is necessary or appropriate, it should occur at the earliest possible stage and not, if at all possible, after the process has come to fruition in the form of a collective agreement.

78. In this case, I considered the applicants delay to be undue in the circumstances.

79. In the result, and having regard to all the circumstances, including the timing of the filing of this application, I was not satisfied that it was appropriate to grant the interim relief requested. In the exercise of the Board's discretion I therefore dismissed the application.

31. With respect, it is not apparent to me that there is anything startling or even novel in the disposition of this application for interim relief on its merits. Indeed, most of the decision (paragraphs 9 to 56) dealt with the issue of the Board's jurisdiction to award interim relief at all. After concluding that the *Statutory Powers Procedure Act* gives the Board jurisdiction to award interim relief, I considered whether the Board should nevertheless approach interim relief applications differently under the current (Bill 7) Act. I concluded that there was no reason for the Board to approach interim relief applications differently, and I applied the approach which the Board had developed under the Bill 40 Act to the application.

32. The fifth decision concerned Board File Nos. 0164-95-R, 0186-95-R, 0187-95-R and 0251-95-R, which proceeded together. I dismissed the three applications for certification in which the PWU sought to displace the IBEW-EPSCCO and IBEW Local 1788 as the bargaining agent for employees covered by the "Generation Projects" and "Transmission" agreements respectively. Sitting alone as a single Vice-Chair, I dismissed the PWU's applications in a 130 paragraph 33 page long (reported version) decision, on the basis that the PWU is not a construction trade union; that is, not a trade union within the meaning of section 126 of the Act, and that it was therefor not entitled to make the applications. This decision dealt with what is probably a question of mixed fact and law which raised an issue of statutory interpretation. The applicants' point to paragraphs 70 and 72 as demonstrating a predisposition against them, and specifically against permitting the members of IBEW Local 1788 to express their wishes regarding the question of who will represent them in collective bargaining.

33. I had some difficulty in understanding what it was that the applicants were complaining about (other than the result). First of all, it is inappropriate to read paragraphs 70 and 72 without also reading paragraph 71:

70. I also note that the Board has recently received some 200 letters from individuals who purport to be members of IBEW Local 1788 and "one of 242 people on the voters' list" for the votes which were held in these applications, in which these individuals express the view that "we as workers should have the right to choose the union to be our bargaining agent", and "urging" that the ballots be counted "without delay". It is readily apparent that someone on the PWU's side of this litigation has orchestrated this letter writing campaign in an attempt to influence the Board. All of the letters are in a prepared form which the individual has dated and signed, and all but a very few have been sent to the Board in an envelope bearing a printed address label. All of the letters are addressed to the Chair. Of course, the Chair is not seized with this matter, I am. Accordingly, the decision in these applications must be, and will be, made by me, not by the Chair or anyone else.

71. I will give both the unidentified orchestrator(s) and the individual letter writers the benefit of the doubt and assume that they did not intend to have the Chair try to influence my decision in these matters. Further, I understand the frustration that the employees must be feeling, their desire and that of the parties for a decision, and that any avoidable delay is very undesirable. However, speed is not the only objective. This has been a lengthy proceeding which has raised complex issues of great significance not only to the employees and parties involved, but also to the construction industry as a whole. Like every matter which comes before the Board, these applications deserve a decision which is made after the Board has given due consideration to the evidence and representations of the parties. Surely, none of them would have it any other way. This takes longer in some cases than in others. Unfortunately for all concerned, this is one of those "longer" times.

72. In any event, the letter campaign is quite irrelevant to the Board's consideration of the issues of whether, first, the PWU must be a section 126 trade union in order to bring its applications herein, or second, if so, whether it is such a trade union. That is, whether or not the PWU is entitled to represent the employees who are the subject of its applications is not a matter of their wishes in that respect. It may be that the PWU wishes to represent the employees and that the employees wish the



PWU to represent them, but the question is whether or not the PWU can do so. That is what this whole case is really about.

34. In argument, counsel for the applicants expressly stated that the purpose of the letters referred to in the excerpt was to try to influence the Board to determine the issue under consideration in favour of the PWU. Although it is not clear from the decision, these letters were sent to the Chair of the Board and without advising any of the parties opposed an interest to the PWU, well *after* the hearing had concluded and I had begun preparing the decision. Accordingly, the letters were intended to induce the Chair to try to influence me to decide the matter in a particular way; namely, in favour of the position the writers supported. This was clearly inappropriate. Indeed, it was not appropriate for anyone directly or indirectly interested in the proceedings to write to the Board about the manner in which the issues should be determined after the hearing had ended. Nevertheless, and notwithstanding the sentiments I expressed in paragraph 70, I gave the benefit of the doubt to the letter writers and made an assumption which I discovered was unwarranted when this bias motion was argued. Further, I did not consider these letters as weighing either for or against the PWU. Not only would it have been improper for me to do so (*Banca Nazionale de Lavori of Canada Ltd. v. Lee-Shanok* (1988) 87 N.R. 178 (Federal Court of Appeal)), they were irrelevant to the question of mixed fact and law which was before the Board. Why they were irrelevant should be clear from the decision read as a whole.

35. Finally, given the applicants' approach to their motion that I disqualify myself, and their apparent sensibilities in that respect, I have no doubt that if I had made no mention of this improper post-hearing letter writing campaign, they would have criticized me for ignoring it.

36. The PWU has filed an application for judicial review of this decision. To my knowledge, no allegations of bias or apprehension of bias have been made in the application for judicial review.

37. Independent and impartial adjudication of disputes is fundamental to our system of justice. Indeed, it is part of the duty of fairness, if not natural justice. Independence and impartiality are overlapping and related, but not congruent concepts. As Madam Justice L'Heureux-Dube observed in 2747-3174 *Quebec Inc. v. Quebec (Regie des permis d'alcool)* (1996) 140 D.L.R. (4th) 577 (Supreme Court of Canada), at page 622, "Independence is a necessary, but not sufficient, prerequisite for impartiality". The differences between them arise out of the focus on the effect of institutional structure on adjudicative freedom (i.e. institutional bias) when independence is in issue; and the focus on the characteristics or attitudes of the individual adjudicator (i.e. personal bias) when impartiality is in issue.

38. More specifically, there is a distinction between institutional bias or lack of independence, and actual or apprehended individual bias or lack of impartiality. As the Supreme of Canada pointed out in *R. v. Valente* [1985] 2 S.C.R. 673, independence and impartiality are related but severable and distinct values or requirements of justice. The Supreme Court of Canada offered the following distinction:

Impartiality refers to a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case... the word "independent" in section 11(d) [of the Canadian Charter of Rights and Freedom] reflects or embodies the traditional constitutional value of judicial independence. As such it connotes not merely a state of mind or attitude in the actual exercise of judicial functions, but a status or relationship to others...

Similarly, in *R. v. Généreux* [1992] 1 S.C.R. 259, the Supreme Court of Canada commented that:

To assess the impartiality of a tribunal, the appropriate frame of reference is the "state of mind" of the decision-maker. The circumstances of an individual case must be examined to determine whether there is a reasonable apprehension that the decision-maker, perhaps by having a personal interest in the case, will be subjectively biased in the particular situation. The question of independence, in contrast, extends beyond the subjective attitude of the decision-maker. The independence

of a tribunal is a matter of its status. The status of a tribunal must guarantee not only its freedom from interference by the executive and legislative branches of government but also by any other external force, such as business or corporate interests or other pressure groups.

39. To summarize, the “independence” of a tribunal refers to its status and freedom to make decisions free from the influence or interference of the government, whether it be by the influence or interference of the persons who appoint tribunal members or otherwise, or that of others. “Impartiality” is personal to individual adjudicators rather than institutional to the tribunal, and tends to be case specific. Impartiality, or the lack thereof, refers to personal interests or opinions which affect an adjudicators ability to determine a dispute on its merits.

40. The applicants did not allege an institutional bias or lack of independence. Their allegations were personal to me. Outside of my involvement with them in my capacity as a Vice-Chair or as an arbitrator, I have had no direct or indirect connection with any of the parties or counsel. Indeed, it was not suggested that I did, or that I have a personal interest or conflict of interest which disqualifies me. What was alleged was that I am not, or that there is a reasonable apprehension that I am not, impartial; that is, that I am personally biased.

41. It is self evident that a Vice-Chair of the Ontario Labour Relations Board must not pre-judge a dispute which comes before him/her, in the sense that s/he must not hold a pre-determined view of the issues or the result. To say that the applicants, and all of the other parties, are entitled to an impartial adjudication of their complaints is to state the obvious.

42. As I have already noted, this forms part of the duty of fairness (and perhaps is one of the requirements of natural justice) which all adjudicators, whether courts or administrative tribunals, owe to parties which appear before them.

43. In that respect, it is essential not only that justice be done, but also that it be seen to be done. This proposition is neither novel nor difficult to understand. In *Matsqui Indian Band, supra*, albeit a case of institutional bias or lack of independence, the Supreme Court of Canada made the point as follows:

[79] This court has considered *Valente, supra*, in at least one case involving an administrative tribunal, *Consolidated-Bathurst Packaging Ltd. v. International Woodworkers of America, Local 2-69* (1990), 68, D.L.R. (4th) 524, [1990] 1 S.C.R. 282, 42 Admin. L.R. 1, in which the independence of the Ontario Labour Relations Board was at issue. There, Gonthier J. stated at p. 561:

Judicial independence is a long-standing principle of our constitutional law which is also part of the rules of natural justice even in the absence of constitutional protection.

[80] I agree and conclude that it is a principle of natural justice that a party should receive a hearing before a tribunal which is not only independent, but also appears independent. Where a party has a reasonable apprehension of bias, it should not be required to submit to the tribunal giving rise to this apprehension. Moreover, the principles for judicial independence outlined in *Valente* are applicable in the case of an administrative tribunal, where the tribunal is functioning as an adjudicative body settling disputes and determining the rights of parties. However, I recognize that a strict application of these principles is not always warranted. In *Valente, supra*, Le Dain J. wrote, at p. 175:

It would not be feasible, however, to apply the most rigorous and elaborate conditions of judicial independence to the constitutional requirement of independence in s. 11(d) of the Charter, which may have to be applied to a variety of tribunals. ... The essential conditions of judicial independence for purposes of s. 11(d) must bear some relationship to that variety.

I reached a similar conclusion in *Généreux, supra* at pp. 128-29.

[81] The classic test for a reasonable apprehension of bias is that stated by de Grandpré J. in *Committee for Justice and Liberty v. Canada (National Energy Board)* (1976) 68 D.L.R. (3d) 716 at p. 735, [1978] 1 S.C.R. 369, 9 N.R. 115:

... the apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal [at p.677], that test is "what would an informed person, viewing the matter realistically and practically - and having thought the matter through - conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly?"

De Grandpré J. further held that the grounds for the apprehension must be "substantial".

[82] The decision in *Committee for Justice and Liberty* confirms, at p.736, that a more flexible approach should be taken in applying the test for bias in the context of administrative tribunals:

The question of bias in a member of a Court of Justice cannot be examined in the same light as that in a member of an administrative tribunal entrusted by statute with an administrative discretion exercised in the light of its experience and of that of its technical advisers.

The basic principle is of course the same, namely, that natural justice be rendered. But its application must take into consideration the special circumstances of the tribunal. As stated by Reid, *Administrative Law and Practice* (1971), at p.220:

"... 'tribunals' is a basket word embracing many kinds and sorts. It is quickly obvious that a standard appropriate to one may be inappropriate to another. Hence, facts which may constitute bias in one, may not amount to bias in another.

To the same effect, the words of Tucker, L.J. in *Russell v. Duke of Norfolk et al.*, [1949] 1 All E.R. 109 at p.118:

"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."

In the case at bar, the test must take into consideration the broad functions entrusted by law to the Board.

44. Accordingly, as in the case of procedural fairness, what this fairness consists of will depend on the nature and function of the particular adjudicative body. In the *Newfoundland Telephone Co.*, *supra*, decision (at page 299), the Supreme Court of Canada observed that:

It can be seen that there is a great diversity of administrative boards. Those that are primarily adjudicative in their functions will be expected to comply with the standard applicable to courts. That is to say that the conduct of the members of the Board should be such that there could be no reasonable apprehension of bias with regard to their decision. At the other end of the scale are boards with popularly elected members such as those dealing with planning and development whose members are municipal councillors. With those boards, the standard will be much more lenient. In order to disqualify the members a challenging party must establish that there has been a pre-judgement of the matter to such an extent that any representations to the contrary would be futile. Administrative boards that deal with matters of policy will be closely comparable to the boards composed of municipal councillors. For those boards, a strict application of a reasonable apprehension of bias as a test might undermine the very role which has been entrusted to them by the legislature.



45. This reflects the test in which the Supreme Court of Canada articulated in its earlier decision in *Committee for Justice & Liberty v. National Energy Board* (1976) 68 D.L.R. (3rd) 716, [1978] 1 S.C.R. 369 (sometimes referred to as “the Crowe case”) when the court said:

The proper test to be applied in a matter of this type was correctly expressed by the Court of Appeal. As already seen by the quotation above, the apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal [at p. 667], that test is “what would an informed person, viewing the matter realistically and practically - and having thought the matter through - conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly?”

I can see no real difference between the expressions found in the decided cases, be they “reasonable apprehension of bias”, “reasonable suspicion of bias”, or “real likelihood of bias”. The grounds for this apprehension must, however, be substantial and I entirely agree with the Federal Court of Appeal which refused to accept the suggestion that the test be related to the “very sensitive or scrupulous conscience”.

This is the proper approach which, of course, must be adjusted to the facts of the case. The question of bias in a member of a Court of Justice cannot be examined in the same light as that in a member of an administrative tribunal entrusted by statute with an administrative discretion exercised in the light of its experience and of that of its technical advisers.

And see, *Huerto v. College of Physicians and Surgeons, supra*.

46. The test for bias, and specifically for bias consisting of a lack of impartiality, which has been developed in Canada is whether a reasonable person would apprehend bias; that is, whether a reasonable person, knowing the relevant facts and being familiar with a particular tribunal’s procedures and decision-making process, would suspect that the individual adjudicator may be unduly influenced, even if unintentionally, by improper considerations to favour one party or “side” in the matter before that adjudicator.

47. (Interestingly, the English House of Lords appears to have rejected the “reasonable suspicion of bias” test in favour of the “real danger of bias” test (*R. v. Gough* [1993] A.C. 646). In doing so, the House of Lords drew the very distinction which the Supreme Court of Canada rejected in the *Crowe* case, and held that the “real danger” test should be applied from the perspective of the court, not from some notional “reasonable man”. Further, although *R. v. Gough, supra*, was a criminal case in which an allegation of bias was made against a juror, the House of Lords specified that the same test should be applied in all cases, whether the allegation concerned judges, members of “inferior” (i.e. administrative) tribunals, arbitrators, or jurors.)

48. In the result, in Canada, an adjudicator who is confident that s/he will be impartial is nevertheless disqualified from hearing the matter in question if there is an objective reasonable apprehension of bias.

49. It is impossible to see into the mind of an adjudicator. Accordingly, indications that a Vice-Chair, for example, is not impartial must be found in the Vice-Chair’s behaviour prior to or during the hearing, in the way in which the hearing was or is being conducted, or in the decisions issued in either the particular proceeding or otherwise.

50. *Huerto, supra*, is an example of a case in which two Saskatchewan Courts considered the conduct of that Province’s College of Physicians and Surgeons and found it wanting. The comments of the trial judge sitting in review of the College’s Discipline Committee commented that:

Even if this were not so, still, the analogy with judges is weak. True, the committee was acting in a judicial capacity, but that did not clothe its members with all the attributes of judges. It is perhaps immodest to say that judges are trained to disregard facts which are not part of the evidence, but doctors on a discipline committee are not.

This betrays a mistrust of what the Court apparently considered to be an actually “inferior” tribunal. In any case, it appears that the Court, both initially and on appeal, was concerned about several things. First, it held that the College’s Discipline Committee had asked itself the wrong question by responding to an allegation of bias by saying that it was not actually biased and failing to consider whether there was a reasonable apprehension of bias. Second, the Court found that there was a reasonable apprehension of bias because one of the four members of the discipline committee had participated in discipline proceedings against the same doctor five years earlier. The Court also found that the committee had improperly relied on its expertise *as evidence* in the proceeding.

51. I am not bound by the Court decisions in this Saskatchewan proceeding. To the extent that the decisions suggest that an adjudicator who has determined a dispute cannot adjudicate a subsequent dispute between the same parties, I respectfully disagree. First, there is judicial authority that that is not the case (see *Kinaschuk v. Weiser* (1983) 3 D.L.R. (4th) 521 (B. C. Supreme Court); *Acharya v. Newfoundland (Medical Board)* (1986) 60 N.F.L.D. & P.E.I.R. 339 (Newfoundland Trial Division) - neither of which were referred to by either court in *Huerto, supra*). Second, such an approach is impractical for a busy administrative tribunal like the Board which not only has a significant number of “repeat customers”, but which in the construction industry in particular deals with many disputes between the same repeat customers. A Vice-Chair of the Board who is familiar with the parties and the industry is more likely to be able to both understand the parties’ positions and why they are taking them in disputes which often have significant policy and practical labour relations elements to them, and to deal with the case in a more expeditious and economical way. Indeed, the Supreme Court of Canada has specifically recognized that quasi-judicial tribunals which regulate business activities or labour relations repeatedly have dealings with the same parties, and that neither the tribunal as an institution nor the individual adjudicators can be said to be biased merely because they have dealt with similar matters between the same parties (see, *Brosseau v. Alberta (Securities Commission)* (1989) 57 D.L.R. (4th) 458 (Supreme Court of Canada)).

52. Further, the *Huerto, supra* decisions also gave little weight to the *raison d’être* of administrative tribunals. Administrative tribunals have diverse functions and take many forms. But whatever their function or form there are two main reasons for giving exclusive jurisdiction (often with a privative clause in aid) to regulate many important aspects of modern life to an administrative tribunal like the Ontario Labour Relations Board:

1. To provide a fair and expeditious but less formal and mediation oriented forum for dealing with certain types of disputes;
2. To provide a mechanism for the speedy adjudication of disputes which have to be litigated by persons who have expertise in the field.

53. The Ontario Labour Relations Board is a quasi-judicial administrative tribunal. The Board places great emphasis on mediation, and as a result many disputes which come before the Board are settled. But when adjudication is required, the Board proceeds in accordance with the rules of fairness and natural justice, and other principles applicable to a quasi-judicial decision-making process. It is therefor appropriate that the Board be held to a high standard when it comes to questions of alleged bias.

54. To say this, or to say as the Supreme Court of Canada has that the appropriate standard is the same as the one which is applied to the courts, does not mean the tribunals like the Board should

look or act exactly like a court. On the contrary, administrative tribunals are specifically designed not to be or act like courts, so that they are better able to fulfil their more specialized purposes. Indeed, in *Toronto (City) v. CUPE, Local 79* (1982) 35 O.R. (2nd) 545, the Ontario Court of Appeal admonished labour relations boards of arbitration not to try to act like courts as follows:

It is, therefore, surprising to observe the extent to which arbitration awards purport to deal with complex questions of law. Many arbitration board decisions cited to us contain scholarly dissertations on important substantive and procedural rules applicable to judicial proceedings. They exemplify the extreme legal formalism and adherence to technical rules which overhangs the arbitration process. At best these elaborate legal studies may be irrelevant because Boards are not bound in their procedure by technical rules of law and procedure. At worst, they can cause delay and unnecessary expense and, as the argument in this appeal demonstrated, they could obscure the real issues confronting an arbitration board and confuse it in the performance of its duty. While it may be helpful for arbitration boards to seek guidance by way of analogy from established legal procedures, they risk committing jurisdictional error by rigid adherence to them.

55. Of course, notwithstanding that an administrative tribunal has exclusive jurisdiction in an area, and that the courts quite rightly defer to administrative tribunals within their areas of jurisdiction (particularly when they are protected by a privative clause), the courts retain a supervisory jurisdiction to ensure that a tribunal does not overstep its jurisdiction, that a tribunal does not ignore the tenets of fairness or natural justice which are appropriate to it, and that a tribunal does not make a decision which is arbitrary or otherwise “patently unreasonable”.

56. The right to an independent and impartial adjudication of a dispute does not mean that parties are entitled to a Vice-Chair whose mind is a blank slate, or who sits as some sort of adjudicative sponge which sits ready to soak up whatever any party may wish to throw at him/her. Quasi-judicial proceedings are not free-for-alls. Parties are not entitled to do whatever they wish. If a party is unable or unwilling to conduct itself appropriately, a directory hand, sometimes a firm one, is required. Further, it is a natural and necessary part of the adjudicative process for a decision-maker to form impressions from the pleadings and as a case progresses. It is also appropriate for a quasi-judicial adjudicator, such as a Vice-Chair at the Ontario Labour Relations Board, to use his/her expertise to assess the evidence and arguments of the parties (although s/he must not use any such expertise as evidence in itself). As I have already noted, one of the purposes of administrative tribunals like the Ontario Labour Relations Board is to provide an expert quasi-judicial forum for determining disputes in specialized areas. Parties to proceedings before the Board are entitled to an adjudicator with an open and impartial mind, not to one with an empty or uninformed one. (*Aitken v. Frontier School Div.* 48 [1985] 4 W.W.R. 323 (Manitoba Court of Appeal)). Indeed, statements which reveal preliminary or tentative impressions are not necessarily objectionable in and of themselves (*550551 Ontario Ltd. v. Framingham* (1991) 4 O. R. (3rd) 571 (Ontario General Division)). On the contrary, properly used, such statements (or questions) can be a useful adjudicative device, and can serve to direct the attention of the parties to matters which are of concern to the adjudicator.

57. In this case, there was no suggestion that I have been hostile or antagonistic to any of the applicants either inside or outside of the hearing room. There was no suggestion that any of the applicants have not been afforded a full and fair opportunity to make their case in any of the proceedings to date. There was no suggestion that took into account anything which was irrelevant or which was not before me in the various proceedings. Except for the letters referred to in paragraphs 32-34, above, which were not properly before the Board, there was no suggestion that I refused to consider (as opposed to give weight to) anything which was before the Board.

58. This situation is quite unlike the one presented in *Cumberland Railway Co., supra*, where the Chair of a Board of Arbitration appointed by the Minister of Labour had also been the Chair of a Board of Referees under the then *Unemployment Insurance Act*, something which the adjudicator did



not reveal to the parties. The Nova Scotia Court of Appeal held that the issues and facts in the two proceedings were substantially the same, that the adjudicator would essentially be sitting on appeal of his own earlier decision, and that he could not be expected to give new and fair consideration to evidence and argument regarding issues he had already determined. The Court concluded that the adjudicator should not have sat as an arbitrator without the express and informed consent of the parties, and in effect held that there was a “bias in law” (to borrow from the head note of the reported decision) to proceed as the adjudicator did.

59. Here, the applicants made no attempt to draw any specific connection between the issues which remained to be determined in these proceedings and the issues which I have determined in any of the decisions which I have already made or participated in. Nor is it obvious on the face of the pleadings that the issues raised in these proceedings have anything to do with the matters which have already been determined, except in the general sense that they form part of the continuum of what is really one continually evolving dispute. To the extent that issues which have already been determined are referred to, they are raised as part of the relevant background to the proceedings. To the extent that they are not raised that way, questions of *res judicata* or issue estoppel may be raised. Although the applicants did suggest that these proceedings would merely give me an opportunity to reiterate the proposition(s) or conclusions set out in the decisions they referred to, I understood them to mean that in a sense of the central theme which they perceive in my decisions (i.e. that the members of IBEW Local 1788 should have no say in their collective bargaining future), and not in the *Cumberland Railway Co.*, *supra*, sense of sitting on appeal of myself. In any event, it appears to me that the issues raised in the proceedings herein are different from the ones which have already been litigated.

60. Nor is this a case like *Re Batorski and Moody*, *supra*, in which the adjudicator had previously tried a police officer charged with discreditable conduct on several occasions, and in each case found against him largely on the basis of his credibility.

61. It may be that the applicants and their supporters honestly believe that I am not impartial as between them and the parties opposite. Although they conceded that that is not the test when bias is alleged, that is in fact the test the applicants would have had me apply. This reflects their subjective belief they have lost every time they have come before me because I am biased against them.

62. The applicants are entitled to an impartial adjudication of their complaints. However, whether they have a subjective “sustained confidence” in that respect is not the issue. Nor is the issue whether justice is being “seen to be done” from their subjective perspective.

63. As a matter of law, the test is an objective one, not a subjective one. Proceedings before the Board are adversarial. When a dispute is litigated, someone inevitably “loses”. The fact that a party loses, or has consistently lost in litigation before a particular tribunal, or before a particular adjudicator, does not by itself suggest bias. If a party fails to make its case, it should not succeed. If it fails to make its case 10 (or 100) times it should not succeed an equal number of times. There is no law of averages or other principle of statistics or probability which operates in legal proceedings to increase the likelihood that a party will succeed in some proportion to the number of proceedings it is involved in, or in proportion to how strongly it holds its views. Nor is there any kind of “broken clock theory” (whereby a 12 hour clock happens to tell the correct time twice a day notwithstanding that it is broken) which operates in legal proceedings. Legal proceedings are not like that. The result of legal proceedings is determined by the application of the relevant law and legal principles to an impartial assessment of the relevant evidence and representations of the parties in a hearing conducted in a manner which permits all parties which have a legal interest in the proceedings to participate and fully present their cases.

64. In the result, I was not satisfied that the applicants have pointed to anything which on any objective analysis suggested any actual or reasonable apprehension of bias. Further, whether or not the extent of my involvement in proceedings involving the applicants is unprecedented, I was not satisfied that there was any other cogent reason for me to withdraw from these proceedings. On the contrary, the nature and evolution of the “single dispute” which these proceedings are one manifestation is itself novel, and to my knowledge unprecedented. In this context, and having regard to the Board’s purpose and functions, and the manner in which the Board operates, I was not persuaded that it was inappropriate for these complaints to be determined by the same Vice-Chair.

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**3623-96-U; 4305-96-T** International Brotherhood of Electrical Workers Local Union 1788, Applicant v. **International Brotherhood of Electrical Workers and Ken Woods**, Responding Parties; International Brotherhood of Electrical Workers, Applicant v. International Brotherhood of Electrical Workers, Local 1788, Responding Party

**Construction Industry - Intimidation and Coercion - Trusteeship - Unfair Labour Practice - Board finding that IBEW Local 1788 was engaged in reasonable dissent and declaring that IBEW had no just cause to impose trusteeship on its local - Board dismissing supervision of the local - Local’s application under Bill 80 provisions of the Act allowed - IBEW’s application to extend trusteeship dismissed**

**BEFORE:** *Jules B. Bloch*, Vice-Chair.

**APPEARANCES:** *L. A. Richmond, H. Tomsett, and J. McDermott* for International Brotherhood of Electrical Workers Local Union 1788; *David McKee and Ken Woods* for International Brotherhood of Electrical Workers.

**DECISION OF THE BOARD;** December 12, 1997

1. Board File No. 3623-96-U is a complaint filed by the International Brotherhood of Electrical Workers Local 1788 (“Local 1788”) to the Board under section 96 of the *Labour Relations Act, 1995* requesting a declaration that the International Brotherhood of Electrical Workers (“IBEW”) assumed supervision and control without just cause contrary to section 149(1) of the Act. As well, Local 1788 seeks a declaration that the IBEW and Ken Woods violated section 87(2) of the Act by intimidation or coercion or the imposing of pecuniary or other penalty on persons, namely the Executive Board Officers of Local 1788, because of a belief that those persons made or are about to make a disclosure in a proceeding under the Act, and because the Executive Board of Local 1788, on behalf of Local 1788 and its members, participated in proceedings under the Act (namely Board File Nos. 0186-95-R, 0187-95-R, 0164-95-R and 0251-95-R, now reported as *Ontario Hydro*, [1997] OLRB Rep. Jan./Feb. 82, and what has commonly been referred to as “the Power Workers’ Union raid on Local 1788”).

2. In short, what Local 1788 requests is an order terminating the trusteeship supervision purportedly imposed on January 23, 1997 and a declaration that the trusteeship is null and void *ab initio*.

3. Board File No. 4305-96-T is a request by the International to extend the trusteeship placed on Local 1788 by the IBEW on January 23, 1997.

4. This decision is about reasonable dissent. More particularly, this decision is about who, if anyone, will represent Local 1788 before the Divisional Court in respect of a judicial review now being brought with respect to *Ontario Hydro*, [1997] OLRB Rep. Jan./Feb. 82.

5. By way of background, these two applications are part and parcel of the larger tension that exists between the IBEW and its Local 1788.

6. The story in regard to these application begins with the section 149 application reported as *International Brotherhood of Electrical Workers*, [1996] OLRB Rep. Feb. 70. The issue in that case was whether or not the IBEW removed parts of Local 1788's trade work jurisdiction without just cause, contrary to section 149 of the Act.

7. It is clear that the removal of jurisdiction from this local created what one can only describe as a furor against the IBEW by the majority of the members of the local.

8. On April 7, 1995, shortly after the hearings in *International Brotherhood of Electrical Workers*, [1996] OLRB Rep. Feb. 70 concluded, and before a decision had been made, the IBEW placed Local 1788 under trusteeship. International Vice-President Ken Woods appointed L. Diggon and T. McGreevy to act as the trustees and representatives of Local 1788. Neither was chosen in any manner by the members of Local 1788.

9. Shortly after the imposition of the trusteeship, on April 12 and 13, 1995, applications for certification were filed by the Power Workers' Union ("PWU") and IBEW Local 1687 in respect of bargaining units of Local 1788 (Board File Nos. 0196-95-R, 0187-95-R, 0164-95-R and 0251-95-R, referred to above). Local 1788 was party to at least two collective agreements: one for the transmission system, and one for generation projects of Ontario Hydro and subcontractors, whose bargaining representative was the Electrical Power Systems Construction Association ("EPSCA").

10. It is clear as evidenced by representations of all parties before me that everyone believed that the membership of Local 1788 wanted a different relationship with its International. This included the possibility of leaving the IBEW fold completely. In fact it is the evidence of those who testified before me that it was their belief that had the ballot boxes been opened in the PWU raid case, the members of Local 1788 would have voted overwhelmingly for the PWU.

11. The Executive Board's election of August, 1996 unfolded as expected. The new Executive Board led by Business Manager Harry Tomsett campaigned with the same point of view as the old Executive Board previously led by John Sprackett. In fact, in submissions before me counsel for Local 1788 asserted that the IBEW could rid itself of this new Executive Board and the next Executive Board that would rise from the ashes of this Executive Board would continue to take the exact same positions that this local and the local Executive Board have taken since the initial removal of work jurisdiction in May of 1992.

12. At the beginning of the hearing the IBEW had narrowed its request for the extension of the trusteeship to deal only with its request to place Local 1788 under trusteeship for the sole purpose of appearing before the Divisional Court on judicial review.

13. Although Local 1788 argued this case in respect of both the 149(2) issue and 87(2), it is unnecessary for me to deal with the issues pursuant to section 87(2).

14. Section 149(2) states:

**149. (2)** A parent trade union or a council of trade unions shall not, without just cause, remove from office, change the duties of an elected or appointed official of a local trade union or impose a penalty on such an official or on a member of a local trade union.



15. The parties entered into an Agreed Statement of Facts which is reproduced below:

The following constitutes the evidence on behalf of the Applicant, on its case in chief. The Responding Parties agree that this is the evidence that would be called by the Applicant (Paragraphs mirror the Applicant's pleadings):

1. In or about May, 1992, Ken Woods, the International Vice-President of the IBEW ("Woods"), took action to transfer the jurisdiction of Local 1788 for work of electrical contractors performing work for Ontario Hydro to other local unions in Ontario.
2. Local 1788 filed an application under section 96 of the *Act*, which was ultimately heard over a period of a year and completed in March 1995. However, a decision did not issue in that matter until February 9, 1996, which is reported at *International Brotherhood of Electrical Workers*, [1996] OLRB Rep. Feb. 70. The parties agree that the Board in this case may rely on the facts and law as stated in this case.
3. On April 7, 1995, shortly after the hearings in that matter concluded, but before a decision had been made, the IBEW placed Local 1788 under trusteeship. Woods appointed, Al Diggon and Tom McGreevy, to act as the trustees and representatives of Local 1788. Neither was chosen in any manner by the members of Local 1788.
4. Shortly after the imposition of trusteeship, that is on or about April 12 and 13, 1995, two applications for certification were filed by the Power Workers' Union ("PWU") and IBEW Local 1687 in respect of bargaining units of Local 1788 (Board File Nos. 0196-95-R, 0187-95-R, 0164095-R and 0251-95-R). Local 1788 was party to at least two collective agreements: one for the Transmission System, and one for Generation Projects of Ontario Hydro and its subcontractors, whose bargaining representative was the Electrical Power Systems Construction Association ("EPSCA"). These collective agreements expired on their face on April 30, 1995.

The IBEW transferred bargaining rights in respect of persons employed by Ontario Hydro to Local 1788 in 1972. The parties to the two collective agreements were the same from 1980 to 1995.

A copy of the Board's decision in the four applications for certification are attached. The parties agree that the Board in this case may rely on the facts and law as stated in this case.

5. On or about March 6, 1996, Henry Tomsett, a member of Local 1788 (who subsequently, in August 1996, was elected Business Manager of Local 1788) filed an application with the Board under section 96 of the *Act* in Board File No. 4100-95-U requesting, *inter alia*, an order terminating the trusteeship and supervision imposed by the IBEW on Local 1788, and an order that an election be conducted forthwith for all positions on the Executive Board, plus the Business Manager's position, by a mailed secret ballot vote of the membership of Local 1788. The Response is attached. .
6. On or about March 26, 1996, the IBEW requested consent to extend the trusteeship of April 7, 1995 (Board File No. 4225-95-T). Following a telephone hearing on April 2, 1996, the board issued the decision.
7. On April 4, 1996, the IBEW requested leave of the Board to withdraw its application to extend the trusteeship, and advised that Local 1788 was presently advising its members that the trusteeship had been terminated.
8. On April 3, 1996, after receiving the Board's decision on April 2, 1996, J.J. Barry, the International President, without advising the membership of Local 1788, appointed an Executive Board consisting of substantially the same persons whom the IBEW had appointed in one capacity or another during the

trusteeship and ordered that elections for local officers take place in December 1996.

9. As a result of this, Harry Tomsett and others filed a further application with the Board, under section 96 of the *Act* (Board File No. 0162-96-U). The Response is attached.
10. On May 6, 1996, Board File No. 0162-96-U was settled by the entering into of Minutes of Settlement, which provided for a secret ballot vote of the members of Local 1788 to elect their Business Manager and Executive Board in accordance with their normal practice, that is, a mailed secret ballot vote, which required the ballots to be counted on August 29, 1996 and the elected officers to assume office on September 6, 1996.
11. This election was held, and the slate consisting of persons appointed to the positions on the Executive Board and as Business Manager by the IBEW in April, 1996 was defeated by a slate of members led by Henry Tomsett, who was elected Business Manager, with 61% of the vote, compared to Al Diggon with 26% of the vote. Over 70% of the membership participated in the vote. This slate was scheduled to take office on September 6, 1996.

Paragraphs 7-15 of this Application relate to matters which will be the subject of litigation in different Board files and, without prejudice to any party's position, will not be litigated in this Application.

With respect to the allegations in paragraphs 23 to 29, the Parties agree that the documents referred to, except Tab 29, are true copies of the documents sent and received as indicated on them. The facts in these paragraphs are not a matter of agreement.

The foregoing constitutes the Applicant's case in chief. However, the Applicant reserves the right to call Harry Tomsett. The respondents undertake to call Ken Woods. The Application will have a normal right of reply, although if fairness demands that the Responding Parties have a further right of reply, application may be made to the Board. This order of proceeding is without prejudice to the positions any party may take in any other proceeding.

16. Local 1788 produced as a witness Mr. Harry Tomsett, its present Business Manager, and the IBEW produced as a witness Ken Woods, International Vice-President. The evidence of both these individuals is not in conflict. In sum, the evidence of Harry Tomsett served to help the Board understand the course of action that Local 1788 undertook in response to the removal of work jurisdiction. Mr. Woods' evidence served to help the Board understand the course of action the International took in its attempt to stop the effects of the PWU raid on Local 1788.

17. The facts for the purpose of this hearing begin with the memorandum of settlement that was reached within the Board File No. 4100-95-U, an application which requested an order terminating the trusteeship and supervision imposed by the IBEW on Local 1788, and an order that an election be conducted forthwith for the positions on the Executive Board plus the Business Manager's position, by mailed secret ballot vote of the membership of Local 1788. The Board declined to extend the trusteeship and consequently the IBEW appointed an Executive Board without holding an election.

18. As a result of the IBEW appointing an Executive Board without an election, members of the IBEW filed an unfair labour practice application (Board File No. 0162-96-U). On May 6, 1996 Board File No. 0162-96-U was settled by minutes of settlement which provided for a secret ballot vote of the members of Local 1788 to elect their Business Manager and Executive Board in accordance with their normal practice, that is, a mailed secret ballot vote which required the ballots to be counted on August 29, 1996 and the elected Officers to assume office on September 6, 1996.

19. The election was held and the Tomsett slate won an overwhelming majority in respect of each of the contested positions. The slate took office on September 6, 1996.

20. Upon arrival at his newly appointed office, Business Manager Harry Tomsett was faced with a letter from Ken J. Woods. In particular, Mr. Tomsett took exceptions to the paragraphs reproduced below:

Many true IBEW supporters have expressed their deep concern for the future of Local Union 1788 under the leadership of the newly elected PWU supporters, and have approached the writer for his assistance in leaving 1788 with their heads held high as true IBEW supporters by transferring their membership to another Local Union of the IBEW.

Brothers, the writer is fully cognizant of the fact that your agreement to take members into your Local Union was contingent upon a vote of the members of Local Union 1788 to dissolve the Local Union.

However, and notwithstanding the foregoing, the writer urges you to give your immediate and serious consideration to accepting into your Local Union those members of Local Union 1788 who have expressed their loyalty to the IBEW, and desire to remain members of the IBEW in a Local Union with established stability under the IBEW banner.

21. Mr. Tomsett was upset and concerned that his tenure as Business Manager would be short-lived. He viewed the letter as a threat. In response to Mr. Woods' letter Mr. Tomsett asserts he directed his solicitor to write the Board, on September 30, 1996, asking the Board to revoke all legal positions that would delay the counting of the ballots. In effect, Local 1788 was requesting that the *Board* refrain from adjudicating upon the "section 126" issue that was raised in the application for certification.

22. The September 30, 1996 letter was not circulated in a timely fashion. The Board finally circulated the September 30, 1996 letter on January 16, 1997. Mr. Woods testified that that was the first time the IBEW became aware of that letter.

23. Mr. Woods asserted in his testimony that the sending of the September 30, 1996 letter was a breach of the fundamental duties and obligations of Local 1788 and its Executive Officers. He viewed this as a betrayal by the Local Executive and a position that was diametrically opposed to the basic elements of the IBEW constitution. Mr. Woods testified that the IBEW considered its options and it did not want to place Local 1788 under supervision in a way as to remove all authority from the elected Executive. It wanted to limit its supervision to the extent necessary to maintain a proper position before the Board and before the Courts. Mr. Woods was advised that there was no provision for a partial supervision of a Local Union under the IBEW constitution. Accordingly, Mr. Woods wrote to the International President requesting that the supervision be imposed indicating the limited extent to which such authority would be exercised.

24. On January 23, 1997 supervision was imposed by the International President. Mr. Woods, the International Vice-President, advised Local 1788 that his intention was to limit the supervision to dealing with the PWU raid cases.

25. The Board issued its decision in *Ontario Hydro*, [1997] OLRB Rep. Jan./Feb. 82, which said the following with respect to the Board's failure to circulate the September 30, 1997 letter and the attempt by Local 1788 to resile from all legal positions taken on its behalf that would delay the casting of the ballots:

#### IV Section 126 Applied

##### (a) Background and Post-Hearing Developments

67. Notwithstanding the "official" position taken by IBEW Local 1788 in these proceedings (at least until after the hearing concluded - see below), the PWU applications herein are very much a



friendly raid by the PWU of IBEW Local 1788, considered to be the IBEW "Hydro Local". The IBEW Local 1788 position at the hearing was put forward by persons put in place by the parent International Union to replace the executive and officers who the International had in effect deposed. Subsequently, in a local union election held pursuant to a settlement of some of the litigation concerning the recent internal IBEW troubles, a new slate of officers was elected for IBEW Local 1788. This new executive has apparently discharged its former counsel because, by letter dated September 30, 1996, a newly retained counsel wrote to the Board and purported to revoke "all legal positions taken on its behalf that would delay the counting of the ballots", and urging the Board to bring these proceedings to a conclusion by counting the ballots cast in the representation votes and "respecting" the results thereof. In subsequent correspondence, Mr. Minsky indicates his clients' objection to this, and submits that the positions taken by the IBEW Local 1788 at the hearing are binding on the new executive, and that they cannot be revoked. Not surprisingly, the PWU has written in support of the position of the new IBEW Local 1788 executive and counsel. The International has responded by placing the IBEW Local 1788 "under supervision" or in trusteeship. Although this supervision or trusteeship appears to have been exercised only to a limited extent so far, this puts IBEW Local 1788 in essentially the same or potentially the same position (it appears) it was in prior to the recent local union elections. All of this is the subject of a further complaint to the Board.)

68. I see no reason why a party cannot change its position in a matter at any time prior to a decision being made. Not only is this a fairly common occurrence, it is desirable because it can narrow the issues which require determination, and on occasion can even lead to a settlement during or even after a hearing. However, I need not determine whether that is so in these proceedings, or whether there is some cogent reason why the IBEW Local 1788 cannot change its position in this case. The fact is that IBEW Local 1788 has not been the only party standing in the PWU's way in these applications. All of the other parties, including the responding employer, have been as well. Consequently, the issues remain the same. So does the evidence; and I will not ignore the arguments. Further, the Board has already ruled that the PWU has to be a section 126 trade union in order to be able to bring its applications herein. Consequently, even if all parties agreed, it is not at all clear that the Board could or would dispense with determining the issue, just as the Board cannot, or at least will not, dispense with the determination of whether or not a new entity which applies for certification is a "trade union" within the meaning of section 1(1) of the Act even if all parties agree that it is.

69. Accordingly, none of this changes anything, although it does serve to underline that the raid is friendly insofar as IBEW Local 1788 is concerned (although unfriendly as far as the other parties, particularly the IBEW International, are concerned).

70. I also note that the Board has recently received some 200 letters from individuals who purport to be members of IBEW Local 1788 and "one of 242 people on the voters' list" for the votes which were held in these applications, in which these individuals express the view that "we as workers should have the right to choose the union to be our bargaining agent", and "urging" that the ballots be counted "without delay". It is readily apparent that someone on the PWU's side of this litigation has orchestrated this letter writing campaign in an attempt to influence the Board. All of the letters are in a prepared form which the individual has dated and signed, and all but a very few have been sent to the Board in an envelope bearing a printed address label. All of the letters are addressed to the Chair. Of course, the Chair is not seized with this matter, I am. Accordingly, the decision in these applications must be, and will be, made by me, not by the Chair or anyone else.

71. I will give both the unidentified orchestrator(s) and the individual letter writers the benefit of the doubt and assume that they did not intend to have the Chair try to influence my decision in these matters. Further, I understand the frustration that the employees must be feeling, their desire and that of the parties for a decision, and that any avoidable delay is very undesirable. However, speed is not the only objective. This has been a lengthy proceeding which has raised complex issues of great significance not only to the employees and parties involved, but also to the construction industry as a whole. Like every matter which comes before the Board, these applications deserve a decision which is made after the Board has given due consideration to the evidence and representations of the parties. Surely, none of them would have it any other way. This takes longer in some cases than in others. Unfortunately for all concerned, this is one of those "longer" times.

72. In any event, the letter campaign is quite irrelevant to the Board's consideration of the issues of whether, first, the PWU must be a section 126 trade union in order to bring its applications herein, or second, if so, whether it is such a trade union. That is, whether or not the PWU is entitled to represent the employees who are the subject of its applications is not a matter of their wishes in that respect. It may be that the PWU wishes to represent the employees and that the employees wish the PWU to represent them, but the question is whether or not the PWU can do so. That is what this whole case is really about.

73. In any case, this is, as I have already observed, very much a friendly raid. The PWU's applications have almost certainly been prompted by recent developments in the electrical power systems sector involving the various parties herein. In no particular order, (assuming that an order can be discerned), there has been a continuous evolution in the structure and operations of Ontario Hydro, there has been serious internal in-fighting within the IBEW in which the IBEW Local 1788, with some support from IBEW Local 353, has been pitted against the International, the IBEW - EPSCCO and the other IBEW Local Unions, and there has been a jurisdictional struggle between the PWU on one hand and the building trades unions, and particularly the IBEW (and even more particularly IBEW Local Union 1788), on the other.

26. After this decision was released, Local 1788 met to review its options. Local 1788 decided through its Executive Board not to pursue any involvement in the judicial review of the award. The Executive Board felt any involvement would be too expensive. Furthermore, their involvement would be to support the PWU which in Local 1788's view would lead to a further trusteeship.

27. The IBEW viewed this approach as inappropriate and saw that it would have to continue the trusteeship insofar as it wanted to file a brief supporting the decision of the Board in respect of the section 126 issue. In other words, the IBEW wanted to assert, through Local 1788, the position that only a section 126 union could apply for certification in a construction industry certification, and that the general provisions of the Act were not available to a union in a construction industry certification.

28. Mr. Harry Tomsett testified before the Board and indicated that he was going to reserve his rights to attempt to change the Executive Board decision in respect of participation in the judicial review.

### **Decision**

29. Counsel for the IBEW asserts that it is not natural or normal for Local 1788 as a responding party in respect of the judicial review to not show up before the Court. It is his view that Local 1788 is seeking its own destruction by not participating in the hearing. He asserts there is even a possibility that the Court might uphold the review as a consequence of one of the defendants not showing up.

30. It is not reasonable dissent, asserts the IBEW, for an Executive Board Officer or an Executive Board to take a position that effectively allows a non-section 126 union to file a certification in the construction industry. It is reasonable for Mr. Tomsett, asserts the IBEW, in his own persona to take a position to contrary to the IBEW. However, it is not reasonable dissent for the Business Manager of Local 1788 to take a position against the policy imperatives and core values of the IBEW.

31. The IBEW submits that the constitution of the IBEW is the document that creates the Local Union. This creates a contract between each and every member with every other member. The constitution is very clear in that each Executive Board Officer of the local union must protect the jurisdiction of the IBEW. The IBEW viewed the letter of September 30, 1996 as a position taken to put the local out of existence. Counsel for the IBEW asserts a dichotomy in respect of this matter. One of the applications for certification involved a competition between Local 1788 and Local 1687. The International reviewed the situation and found that in fact this was simply an issue between the two Locals. Although the International Union might want to have ICI bargaining rights, the IBEW also realized that this might undercut the EPSCA agreement. In its view, it was reasonable for Local 1788

to take the position that it did in respect of Local 1687 and consequently, the International withdrew its supervision in respect of that Board File.

32. This is in juxtaposition to the International's over-arching policy desire to preclude anyone other than construction unions from becoming bargaining agents in the construction industry. In the IBEW's view any position that does not support the exclusion of a non-section 126 union from applying for certification in the construction industry is a direct attack on the core values of the IBEW.

33. Counsel for the IBEW referred to a line of cases which distinguishes between the union and its members. In effect, the union has a separate identity from the sum of its members. (See *McMillin et al. v. Yandell et al.* (1971), 22 D.L.R. (3d) 398 (Ont. H.C.), *Re International Nickel Co. of Canada Ltd., Shedden v. Kopinak* [1950] D.L.R. 381, *Smart et al. v. Trigiani et al.* (1985), 86 CLLC para. 14,006; *Lakeman and Barrett et al. v. Bruce et al.* [1949] 3 D.L.R. 527; *Raymond v. Doherty et al.* [1965] 1 O.R. 593; *Re Board of Trustees of Provincial Plasterers' Benefit Trust Fund and Provincial Plasterers' Benefit Trust Fund* (1990) 71 O.R. (2d) 558).

34. In sum, Mr. McKee on behalf of the IBEW asserts that the Local Executive Board or its members cannot take an action that effectively destroys the Local. The IBEW asserts that any motion brought to the Executive Board or to the membership which effectively destroys the Local Union or undermines the Local Union is not a lawful motion. In the face of such a motion, asserts the IBEW, the Local should be put into trusteeship.

35. The test under section 149 has previously been construed in *International Brotherhood of Electrical Workers*, [1996] OLRB Rep. Feb. 70, at page 91, par. 88:

We are satisfied that "just cause" in section 147 of the Act (now section 149) creates an objective standard which requires something other than that a parent union act in a manner which is not arbitrary, discriminatory or in bad faith. While that may be part of the question which is properly asked in any given case, the question to be asked under section 147 is this: "Was the parent union's decision a fair and reasonable one having regard to all of the circumstances?"

36. The case referred to above dealt with a section 149(1) application. Counsel for Local 1788 asserted that there should be a different test for just cause for a section 149(2) application.

37. In my view, I do not have to decide whether the section 149(2) standard is appropriate or whether a higher standard is appropriate in a section 149(1) case. The decision that I come to is arrived at by applying the standard found the paragraph 36 above.

38. Local 1788 passed a motion saying that it was not going to appear at the judicial review of the application for certification. In its view, it was not appearing because of the cost involved and because it could not support the IBEW view and the *Board's* decision. Local 1788 from the beginning has taken a consistent approach which is opposite to the view expressed by its International.

39. In my view, a local can reasonably dissent so long as its dissent does not irreparably affect the core values of the parent union.

40. In respect of the facts before me, the local union takes the position that it will not appear at the judicial review. In my view, taking such an approach is appropriate in the circumstances where the local union is fighting to protect its remaining jurisdiction and has expressed its displeasure at the International by participating in the PWU raid (see paragraph 26 above). This is especially so in a context where the International union has already taken a portion of its work jurisdiction and given that jurisdiction to other locals.



41. I do not find the parent union's decision to be a fair and reasonable one having regard to all the circumstances in this case. In particular, the positions which would be advanced by the parent union under the guise of a trusteeship of Local 1788 will already be advanced by other parties within the context of the judicial review. It will not be difficult to explain why Local 1788 is not attending at the judicial review. The evidence before me clearly states that the majority of the membership of Local 1788 does not wish to be in the IBEW fold in circumstances where the IBEW intends to balkanize the local. The membership has a fear about balkanization. It is clear by the letter of September 5, 1996 from Mr. Woods to the business managers of all IBEW construction local unions in Ontario that the dissolution of Local 1788 is a possibility.

42. I declare that in the circumstances of this case and on the facts before me that the IBEW does not have just cause to place Local 1788 under trusteeship for the purpose of advancing a position which supports the decision of the Board before the Divisional Court hearing in respect of the judicial review of *Ontario Hydro*, [1997] OLRB Rep. Jan./Feb. 82.

43. My decision might be different had Local 1788 decided to participate in the judicial review and take a position against the IBEW's stated policy objectives. At that point it is possible to see that the dissent of Local 1788, through its involvement in the judicial review, is directly attacking a core value of the IBEW. The case at judicial review is one about limiting who can apply for certification in the construction industry in Ontario. The IBEW views *Ontario Hydro, supra*, as an important victory, in that the Board has declared that only unions which have met the requirements of section 126 of the Act may apply for certification in respect of a construction industry bargaining unit. Local 1788's *active* attack on those core values might cause the International to place the Local under supervision for the limited purpose of appearing as the Local at the judicial review, and could lead a Vice-Chair of the Ontario Labour Relations Board to find that there was just cause for the supervision.

44. That is not the case before me and I find that this inaction on the part of Local 1788 is reasonable dissent in the circumstances. Consequently I would dismiss the supervision.

45. Nothing in this decision prevents any member of Local 1788 in his or her personal capacity from participating as an intervenor in the judicial review.

46. Throughout this application and other applications before the Board there has been discussion about the dissolution of Local 1788. I would note that in the context of the long history before the Board with respect to the fight between Local 1788 and the International, any dissolution of Local 1788, without the agreement of Local 1788, would be scrutinized quite carefully by the Board should an application under section 149 be brought.

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**3840-96-M Louis Martin, Applicant v. International Union of Bricklayers and Allied Craftsmen, Local 5, Responding Party**

**Financial Statement - Remedies - Board finding that union's "unaudited" financial statement accompanied by Review Engagement Report prepared by chartered accountants not amounting to audited financial statement required by section 92 of the Act - Board directing union to file with the Board (and to deliver to the applicant) a copy of its audited financial statements verified by the affidavit of its treasurer**

**BEFORE: D. L. Gee, Vice-Chair.**

**APPEARANCES:** *Louis Martin* on his own behalf; *L. A. Richmond* and *R. Forbes* for the responding party.

**DECISION OF THE BOARD;** December 3, 1997

1. The style of cause is hereby amended to reflect the correct name of the responding party: "International Union of Bricklayers and Allied Craftsmen, Local 5".

2. This matter is an application concerning financial statements filed pursuant to section 92 of the *Labour Relations Act, 1995* (the "Act").

3. Section 92 provides as follows:

92. (1) Every trade union shall upon the request of any member furnish the member, without charge, with a copy of the audited financial statement of its affairs to the end of its last fiscal year certified by its treasurer or other officer responsible for the handling and administration of its funds to be a true copy, and, upon the complaint of any member that the trade union has failed to furnish such a statement, the Board may direct the trade union to file with the Registrar of the Board, within such time as the Board may determine, a copy of the audited financial statement of its affairs to the end of its last fiscal year verified by the affidavit of its treasurer or other officer responsible for the handling and administration of its funds and to furnish a copy of the statement to the members of the trade union that the Board in its discretion may direct, and the trade union shall comply with the direction according to its terms.

(2) Where a member of a trade union complains that an audited financial statement is inadequate, the Board may inquire into the complaint and the Board may order the trade union to prepare another audited financial statement in a form and containing the particulars that the Board considers appropriate and the Board may further order that the audited financial statement, as rectified, be certified by a person licensed under the *Public Accountancy Act* or a firm whose partners are licensed under that Act.

4. The applicant, Mr. Louis Martin seeks a copy of the audited financial statements of the International Union of Bricklayers and Allied Craftsmen, Local 5 ("Local 5") for the year 1996 and further seeks a breakdown of the amounts spent under the headings "automotive", "seminars and conventions" and "wages".

5. On or about July 7, 1997, Local 5 forwarded to Mr. Martin a set of unaudited financial statements accompanied by a Review Engagement Report (the "Report") prepared by the Chartered Accountants of Hoar & Kloosterman. The Report indicates that the review conducted by the accountant does not constitute an audit. Local 5 submits that the review conducted by the accountant is sufficient to constitute an "audit" for the purposes of section 92 and further submits that Mr. Martin is not entitled to a breakdown of amounts spent. Local 5 asserts that, if Mr. Martin wants a breakdown of the amount of money spent, he can request such details at the membership meeting where the financial statements are presented. The following decisions are relied on by Local 5: *Murray G. Strong*, [1981] OLRB Rep. July 901; *Edward Miller*, [1983] OLRB Rep. Nov. 1864; *Reginald Robert*, [1984] OLRB Rep. Aug. 1125; *John Kozak*, [1988] OLRB Rep. Dec. 1281; and *International Union of Operating Engineers, Local 793*, [1995] OLRB Rep. Oct. 1270.

6. As a result of section 92 of the Act, any member of a trade union is entitled, upon request, to be provided with a copy of the trade union's *audited* financial statements. "Audit" is defined in the Shorter Oxford English Dictionary as "[an] official examination of accounts with verification by reference to witnesses and vouchers". Thus, an audit requires someone to have systematically checked all of the receipts and vouchers to ensure that the numbers as stated on the financial statements are correct. The case law relied upon by Local 5 indicates that such exercise need not be conducted by a

chartered accountant (it is sufficient if it is conducted by a qualified individual in an arm's length relationship to the trade union) but it does not support the proposition that something less than an audit, such as a "Review Engagement Report", is sufficient to constitute an audit.

7. The financial statements provided to Mr. Martin by Local 5 clearly indicate that they are "unaudited". This means that the accountant who prepared such statements did not verify Local 5's accounts by reference to witnesses and vouchers. The financial statements Local 5 has provided to Mr. Martin are thus not audited financial statements as required by section 92 of the Act.

8. Concerning Mr. Martin's request that Local 5 be required to provide him with a breakdown of the amounts spent on automotive, seminars and conventions and wages, it is my determination that Mr. Martin is to be provided with such a breakdown. I recognize that the jurisprudence relied upon by Local 5 indicates that the Board will not normally require a trade union to provide a breakdown of expenses. I am persuaded, however, that such is appropriate in this case. First, it is apparent that relations between Mr. Martin and Local 5 are strained. In Local 5's view, Mr. Martin is seeking the information for "improper" purposes. I am not confident in such circumstances that, should Mr. Martin request such information at a membership meeting as Local 5 submits is his proper recourse, the information will be forthcoming. Second, the amounts of money in question are very small and accordingly it is unlikely that the exercise involved in breaking the amounts down will be time consuming.

9. As a result, I hereby direct Local 5 to file with the Registrar, no later than January 1, 1998, a copy of its audited financial statement for the year 1996 verified by the affidavit of its treasurer or other officer responsible for the handling and administration of its funds and to furnish a copy of the statement to Mr. Martin together with the affidavit. Such statement is to contain a breakdown of the amount of money spent on automotive, seminars and conventions and wages.

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**3999-96-FC; 0052-97-R** Canadian Union of Public Employees, and its Local 3875, Applicant v. **Native Child and Family Services of Toronto**, Responding Party; Peter Menzies, Applicant v. Canadian Union of Public Employees, Responding Party v. Native Child and Family Services of Toronto, Intervenor

**First Contract Arbitration - Practice and Procedure - Ratification and Strike Vote - Representation Vote - Termination - Reconsideration - Subsequent to union filing application for first contract arbitration, group of employees applying to terminate bargaining rights - Board directing representation vote and directing that ballot box be sealed - Board also directing that termination application be heard with first contract application - On first day of hearing, employer signing union's proposed collective agreement and asking that first contract application be terminated as moot - Board finding that parties had "effected a first collective agreement" - Board adjourning union's application and directing that proposed collective agreement be put to ratification vote - Union's application for reconsideration dismissed - Employees ratifying collective agreement, but Board declining to accept ratification vote as expression of employee wishes on termination application - Board directing parties to file submissions regarding status of first contract application and termination application**

**BEFORE:** *Gail Misra*, Vice-Chair, and Board Members *J. A. Ronson* and *D. A. Patterson*.



**APPEARANCES:** *Judith McCormack, Gina Gignac and Joanne McKenna* for CUPE, Local 3875; *A. Craig, Bill McNaughton, A. P. Tarasuk and K. Richard* for Native Child and Family Services of Toronto; *C. J. Abbass, Peter Menzies and Robert Crawford* for Peter Menzies.

**DECISION OF THE BOARD;** July 29, 1997

1. Board File No. 3999-96-FC is an application filed with the Board on February 27, 1997 by the Canadian Union of Public Employees and its Local 3875 (the "union") for direction that a first collective agreement be settled by arbitration, pursuant to section 43 of the *Labour Relations Act, 1995*. Board File No. 0052-97-R is an application for termination of bargaining rights, filed by Mr. Menzies on April 4, 1997, pursuant to section 63 of the Act. The first contract application was scheduled by the Board for hearing on March 17, 1997, and to continue day to day until it was completed. However, the parties adjourned that date on consent, and asked the Board to set dates beginning in the week of April 21 to 25, 1997. By this adjournment, the parties are taken to have waived their right under section 43(2) of the Act to have the application decided within 30 days of the date of application to the Board.

2. By a decision in Board File No. 0052-97-R, dated April 11, 1997, the Board (panel differently constituted) directed that a representation vote be held, that the ballot box be sealed, and that the termination application be heard with the first contract application. These matters came on for hearing on April 23, 1997, at which time counsel for Mr. Menzies requested an adjournment on the basis that he had only received the materials pertinent to the first contract case that morning. The Board ruled that it would adjourn for the remainder of the day to allow Mr. Abbass an opportunity to review the materials.

3. The hearing resumed on April 24, 1997. At that juncture the Native Child and Family Services of Toronto (the "employer") informed the Board that it was prepared to accept the union's proposed collective agreement, tendered as part of its first contract application. The employer had signed back the union's proposed collective agreement, and argued that since the parties had effected a first collective agreement, the union's application for a direction that a first collective agreement be settled by arbitration was moot. The employer argued that the matter should be terminated as there was no longer anything in dispute between the parties. If the union claimed that its proposed collective agreement was not a collective agreement, but an offer, then the employer accepted that offer, and it would be bad faith bargaining for the union to claim it was now withdrawing that proposal. The employer claimed it had decided not to carry on fighting this application as it is a non-profit organization which cannot afford to undertake this litigation. It argued that it is a continuing prerequisite to the Board's jurisdiction in section 43 applications that the parties are unable to reach a collective agreement. Once that is no longer the condition, the employer argues the Board no longer has jurisdiction.

4. The termination applicant argued that if the first contract application was settled, its application should proceed and that the Board should count the ballots cast in that application. It argued that the Board could then hear the union's allegations about the conduct of the vote. However, it was pointed out that the union had made no allegations pursuant to section 63(16) of the Act that the employer or anyone acting for the employer had initiated the application, or engaged in threats, coercion, or intimidation in connection with the termination application. The termination applicant invited the Board to exercise its discretion under section 96(4) of the Act not to inquire into the union's allegations at all, as it was argued that given the nature of the allegations, no purpose would be served by doing so.

5. The union argued that pursuant to the opening words of section 43(2) of the Act, once an application has been made, the Board has no discretion *not* to consider the first contract application, and must decide the issues in dispute. It was suggested that the Board would be declining its jurisdiction

not to hear and determine the issues raised in the section 43 application if it decided not to proceed. The union argued that the act of signing the union's proposed collective agreement was simply a fact suggesting that the employer had changed its bargaining position after the date of application. Since, it was argued, the Board does not consider post-application date evidence, the union suggested the Board should not pay any attention to what the employer purported to have done. The union characterized its proposed collective agreement simply as an offer, and the employer's acceptance of the union proposal as simply a "new offer on the table" pursuant to settlement discussions between the parties. As settlement discussions, the union argued that these discussions should not be admissible before the Board as they are discussions undertaken "without prejudice" and after the date of application.

6. It was the union's position that the employer had prolonged bargaining for so long that a termination application had been filed. The undisputed chronology of events was that the union had been certified on October 23, 1995. Bargaining carried on until the union applied for direction that a first collective agreement be settled by arbitration on February 27, 1997. A hearing was scheduled to begin on March 17, 1997, but on March 11th the employer requested an adjournment, and the union consented. On March 13th an application for termination of bargaining rights was filed, which was subsequently withdrawn on April 11, 1997. A second termination application, the subject of this proceeding, was filed on April 4, 1997. Hence, the union argued, as a result of the employer's conduct an issue about the union's bargaining rights had arisen, and that is a reason for the Board to hear the merits of the section 43 application.

7. It was suggested that the original date scheduled for a hearing of the section 43 application was March 17, 1997, and the hearing was to continue day to day until completed. According to the union, it was therefore conceivable that the matter could have been heard and completed before the termination application had been filed on April 4, 1997. The Board did not consider this argument to be of much assistance as the parties had agreed to adjourn that date and to argue what would have happened had the hearing proceeded would be purely speculative.

8. Having considered the submissions of the parties the Board ruled orally as follows:

Having heard the submissions of the parties, the Board is of the view that as a result of the employer signing the union's proposed collective agreement, the parties appear to have reached a proposed collective agreement. Pursuant to section 44(1) and (3) of the Act, this proposed collective agreement will now have to be put to a vote by the employees of the bargaining unit.

The Board is adjourning these matters until Friday May 2, 1997, to allow a ratification vote to be held. If this is insufficient time, the union is to inform the Board and the parties of when the ratification vote will be completed. This matter is therefore adjourned.

9. When the Board reconvened the hearing on May 2, 1997 it was informed that a ratification vote had been held, without prejudice to the union's position that it should not have been held. The employees of the bargaining unit had voted on April 28, 1997 to accept the proposed collective agreement, with 15 votes for the proposal and 5 against.

10. The following are our reasons for our oral ruling of April 24, 1997.

11. Sections 43(1), (2), and (23) of the *Labour Relations Act, 1995* state:

43. (1) Where the parties are unable to effect a first collective agreement and the Minister has released a notice that it is not considered advisable to appoint a conciliation board or the Minister

has released the report of a conciliation board, either party may apply to the Board to direct the settlement of a first collective agreement by arbitration.

(2) The Board shall consider and make its decision on an application under subsection (1) within 30 days of receiving the application and it shall direct the settlement of a first collective agreement by arbitration where, irrespective of whether section 17 has been contravened, it appears to the Board that the process of collective bargaining has been unsuccessful because of,

- (a) the refusal of the employer to recognize the bargaining authority of the trade union;
- (b) the uncompromising nature of any bargaining position adopted by the respondent without reasonable justification;
- (c) the failure of the respondent to make reasonable or expeditious efforts to conclude a collective agreement; or
- (d) any other reason the Board considers relevant.

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(23) Despite subsection (2), where an application under subsection (1) has been filed with the Board and a final decision on the application has not been issued by it and there has also been filed with the Board, either or both,

- (a) an application for a declaration that the trade union no longer represents the employees in the bargaining unit; and
- (b) an application for certification by another trade union as bargaining agent for employees in the bargaining unit,

the Board shall consider the applications in the order that it considers appropriate and if it grants one of the applications, it shall dismiss any other application described in this section that remains unconsidered.

12. A "No Board" report had issued on January 28, 1997, thereby informing the parties that a Board of Conciliation would not be appointed to address the dispute between the union and the employer in this case. On February 27, 1997, when the union filed its application for a first contract direction, the parties had not been able to effect a first collective agreement. Hence, on the date of application, the provisions of section 43(1) of the Act had been satisfied.

13. The current termination application was filed on April 4, 1997, long after the filing of the first contract application. No final decision had been issued when this latter termination application was filed. Pursuant to section 43(23) of the Act, in these circumstances the Board considers the applications in the order that it considers appropriate, and if it grants one of the applications, it shall dismiss any other application which remains unconsidered. Before the Board even considered what the order of proceeding should be, and prior to the calling of any evidence on the first contract application, the employer agreed to sign the union's proposed collective agreement, which the union had filed with its application for first contract direction.

14. Rule 67 of the Board's Rules of Procedure requires that an application for first contract arbitration must include "a copy of a proposed collective agreement that the applicant is prepared to sign". This document is delivered to the responding party as part of the application. In its response, the responding party must also include "a copy of a proposed collective agreement that the responding party is prepared to sign" (see Rule 69(h)). The Board requires that the parties turn their attention to these matters before commencing upon a course of litigation in the hope that the parties will consider carefully their respective positions. It also gives each party an opportunity to evaluate the other's



proposed collective agreement to see whether they can live with it, and thereby settle their dispute without resort to litigation.

15. In this instance the employer filed its response on March 25, 1997, and included its proposed collective agreement. It decided on the second day of the hearing, almost two months after the filing of the application, that it was prepared to accept the union's proposed collective agreement. While the union asked the Board to ignore this action taken by the employer, the Board saw no labour relations purpose being served by the continuation of litigation in the face of an employer accepting that which the union had claimed it was prepared to sign as a collective agreement.

16. In the intervening period of two months, between the filing of the application and the employer's acceptance, there had been no strike or lock-out, or any other matters which the union drew to the Board's attention to suggest that the union had withdrawn its proposal due to a change in circumstances. It is noteworthy that the *union* had submitted a corrected proposed collective agreement on April 11, 1997, which was the proposal that the employer actually accepted. Thus, the union proposal had been updated within the two weeks prior to the employer's acceptance thereof. No meaningful collective bargaining or litigation event occurred in the intervening period.

17. The union indicated to the Board that because the employer had informed it, in settlement discussions, that the union's proposal may result in lay-offs, the proposal should be considered to be withdrawn. Quite apart from the concern the Board has with the appropriateness of the union seeking to introduce before the Board the content of discussions which the parties had, at the behest of the union, specifically undertaken on a "without prejudice" basis, even if true and even if the union could raise and rely upon this fact, it does not lead to the conclusion that the union's proposed collective agreement had been withdrawn. If anything, the fact that the employer advised the union of its concern that the current proposal would lead to lay-offs, and the absence of any response from the union changing its position, suggest that the union's proposal at the time remained outstanding.

18. After those submissions, and as noted earlier, the employer offered to meet with the union prior to signing the proposed collective agreement to discuss this issue, but the union refused. In an effort to encourage the parties to settle this matter, the Board suggested that the parties meet over the lunch break to discuss any matters they might wish to. However, the Board was informed that the parties did not meet prior to the employer signing the proposed collective agreement and giving it back to the union.

19. In *Great Lakes Community Credit Union Limited*, [1991] OLRB Rep. June 758, the Board considered whether it would consider negotiating evidence after the date of the filing of an application for first contract direction. The employer in that instance wished to submit evidence of negotiations which had occurred after the application had been filed. The union argued that the situation would never crystallize if a party was permitted to introduce post-application evidence, and furthermore, that a party could create self-serving evidence after an application was filed, knowing that it could rely on such evidence in the hearing. The Board adopted the union's argument in that case to find that there had to be a "cut-off" point so that the parties to litigation would know what they had to prepare for hearing. That point was the date of application.

20. In the case before us there was no issue of the employer seeking to lead some evidence of positions it had taken after the application date. However, it was seeking to inform the Board that it had accepted without exception the union's proposed collective agreement. Even after one party has filed a section 43 application, the parties are under a statutory obligation to make reasonable efforts to reach a collective agreement. In this case the Board was satisfied that there was no evidence that the union's proposal had been withdrawn and that the employer had accepted what the union wanted and proposed. It was in all of these circumstances that the Board made its oral ruling that the parties appeared to have

reached a proposed collective agreement. They had, to use the statutory language of section 43(1) of the Act, “effected a first collective agreement”.

21. While this collective agreement had been reached in the context of a first contract application, it was not as a result of the Board having made a direction pursuant to section 43(2) of the Act. The union did not argue that the Board should, subject to section 44(2)(a) of the Act, impose the collective agreement by order of the Board. The Board was therefore of the view that the proposal would have to be made subject to ratification by the union membership, pursuant to section 44 of the Act.

22. It was for all of the above reasons that the Board made the ruling of April 24, 1997, set out in paragraph 8 above.

### **RECONSIDERATION**

23. On May 22, 1997 the applicant filed a request for reconsideration of this ruling, the reasons for which we have provided above.

24. From a review of the applicant’s lengthy submissions it is apparent that the applicant simply thinks the Board was wrong in making the ruling it did because the applicant believes the Board, in reaching its decision, applied contract principles which the applicant considers inappropriate in the circumstances of this case. The union argues that a collective agreement is not a contract but a unique form of agreement which owes its existence to a statutory regime which operates regardless of contract doctrine. The union suggests that the contract law concepts of offer and acceptance should not apply in the circumstances, and that the Board should not have been led to the conclusion that there was a contract as a result.

25. The union also argues that when one party has made a proposal and subsequently the other accepts that proposal over the objections of the first party, the Board considers whether the first party was entitled to change its position. In doing so, the Board will consider the amount of time elapsed and intervening circumstances which may have given rise to the change of position. The union relies on *Toronto Jewellery Manufacturers’ Association*, [1979] OLRB Rep. July 719, wherein the Board found that an employer’s last offer which the union purported to accept had expired, even though it was never explicitly withdrawn, as a result of the passage of time and the fact that the union had gone on strike. The Board held that the parties may be legitimately entitled to change their minds because of intervening events such as a strike. The union also relies on *Pine Ridge District Health Unit*, [1977] OLRB Rep. Feb. 65, where the Board recognized that a party may wish to change its position at the bargaining table due to the passage of time and changed circumstances. The Board stated that “the party opposite cannot be taken to be unaware of the increasing likelihood of that happening with the passing of each successive day and week”. In that case the employer had been permitted to change its mind because its views about a particular proposal had changed as a result of an arbitration award.

26. The union again submits it changed its mind because the employer had indicated to it that the union’s pension proposal may lead to lay-offs, and that the employer therefore wanted to discuss this with the union. The Board has earlier outlined its concerns about the union’s articulation of this reason as it would appear that the union became aware of this employer position in the course of “without prejudice” and “off the record” discussions with the employer prior to the hearing commencing on April 24, 1997. The union has not suggested that it formally withdrew its proposal for a first collective agreement prior to the employer accepting the proposal at lunch time on April 24, 1997, but it is arguing that the circumstances changed as a result of the employer’s imparting of the above-noted information, so that the proposal should have implicitly been considered to have been withdrawn.

27. Counsel for the union, in the reconsideration application, has referred to and relied upon discussions which all counsel and the Board had in an *in camera* and “off the record” session. We do not intend to address the substance of counsel’s submissions insofar as they rely upon matters discussed only *in camera*. The Board has a long-established practice, well-known and accepted in the labour relations community, of occasionally meeting with counsel for all parties in closed and *in camera* sessions to attempt to settle matters, narrow issues, or in order to facilitate the smooth conduct of a hearing. It is understood in the labour relations community that anything said by counsel or the Board in these sessions will not be recited and relied upon by counsel in the hearing (unless there is a concern with the process itself; for example, a natural justice concern) or by the Board in reaching its decisions, and that only submissions made or evidence led in the course of the open session of the hearing will be considered in Board deliberations. Hence, we have not considered the union’s submission as it relates to counsel’s “off the record” discussions with each other and with the Board.

28. It is argued by the union that it did not sign the proposed collective agreement which had been included with its application for first contract direction, and indeed there was no signature page with the proposal. Hence, when the employer signed it, that could not constitute a collective agreement. While the union agrees that a proposed collective agreement has to be ratified by the members, the union questions the Board’s jurisdiction to direct the holding of a ratification vote in this instance. Since there was no collective agreement, the union argues that the Board should not conclude that the collective agreement is valid and effective *because* of the membership’s ratification thereof.

29. Pursuant to section 114(1) of the *Labour Relations Act, 1995* the Board has a broad discretion to reconsider any decision or order made by it and to vary or revoke any such decision or order. However, the Board has repeatedly indicated that it will not reconsider its decisions unless there are good reasons for doing so. This approach furthers the interest of finality in Board decision-making and, in practical terms, discourages parties from seeking to delay the implementation of Board orders. The Board has been prepared to reconsider an earlier decision or order where that decision contains an obvious error; where the request raises important policy issues which have not been adequately addressed; where new evidence is sought to be presented which could not, with the exercise of due diligence, have been obtained and presented previously and which could, if accepted, make a difference to the decision; and where representations are sought to be made which the party had no previous opportunity to make.

30. Having reviewed the union’s submission regarding the reconsideration, it would appear that the union is seeking to re-argue its case. The arguments being made by the union were available to it on April 24th, and indeed, some of the same arguments were made at that time. Had the union wished to have an adjournment to prepare its argument more fully at that time, it could have made a request to that effect. However, it did not do so. The reconsideration request, except as it relies upon matters discussed “off the record” (which we have dealt with above), argues matters raised at the hearing, or which readily could have been. We see no reason to reconsider on this basis, and accordingly, the reconsideration request is therefore dismissed.

### **STATUS OF THE RATIFICATION VOTE**

31. On May 2, 1997, when the hearing had reconvened following the ratification vote, the union suggested that there were two issues arising out of the previous day of hearing: 1) that it wished to apply for reconsideration of the Board’s previous ruling about the parties having reached a proposed collective agreement (which request we have now dealt with); and, 2) how the first contract application should be handled. Following discussions between the parties, the Board was asked to decide whether the ratification vote has rendered the termination vote null and void. The union retained its right to



make any other arguments it wished after the Board has ruled on this issue. The balance of this decision deals with this issue.

32. Counsel for Mr. Menzies, the applicant in the termination application, suggests that there is no first contract application remaining before the Board because the employees have ratified a first collective agreement. Hence, in his view, the termination application is the only outstanding matter. Although the employees ratified - and therefore have - a collective agreement, that is of no consequence because the Board, pursuant to section 63(18) of the Act has the power to declare that a collective agreement ceases to operate when it declares a termination of bargaining rights.

33. In anticipation of the union argument that the Board should consider that the situation in this workplace has changed because of the acceptance of the collective agreement, Mr. Abbass argues that the ratification vote and the termination vote are completely different, and that the ratification vote cannot be said to be a substitute for the termination vote. In any event, Mr. Abbass suggests that the union has not made any allegations that the negotiation problems have contributed to or led to the filing by employees of the termination application.

34. With respect to the status of the first contract application, counsel for the employer adopted Mr. Abbass' submissions, and stated that no legal issue remains in that application and the Board is without jurisdiction to deal with the section 43 application.

35. As regards the ratification vote, the employer argues that that vote is an expression of employee wishes to their union and employer, and is not to be taken as any expression to the Board of the employee views on the termination application. In any event, the question posed in the termination vote was different than that posed in the ratification vote, so that the ratification vote cannot vitiate the termination vote.

36. The union argues that the resounding vote for the proposed collective agreement is an unmistakable result which the Board should not ignore. It argues that whatever the employees may have voted in the termination vote, this is the most recent expression of their wishes. The union draws the Board's attention to the timing of the earlier vote which was taken in the context of a bargaining unit which had been certified in October, 1995, and had been without a collective agreement for so long.

37. The union draws the Board's attention to the fact that the first contract application was filed long before the termination application. The union's proposed collective agreement was a required part of the section 43 application, although the union had filed an amended proposed collective agreement on April 11, 1997. Now the employer has, in the context of the first contract application hearing, seemingly settled this application by accepting the union's amended collective agreement proposal. The union notes that the termination applicant has been present at these proceedings and has not demurred to the employer acceptance of the union's proposal or to the holding of the ratification vote. Thus, the union argues, the termination applicant has agreed with the first contract being reached.

38. Since changes to the Act in 1995, employees have been given the right to vote by secret ballot on the ratification of collective agreements. In this ratification vote there are no allegations that the vote was not held as envisaged by the Act. Hence, the union argues, the Board ought to see the ratification vote as the latest expression of employee wishes about whether they want the union or not. The union suggests that by accepting the proposed collective agreement, the employees are saying they want the union to represent them in the administration of the collective agreement.

39. The union also argues that the collective agreement contemplated under section 43 of the Act is a two-year agreement to ensure that the parties to a first collective agreement have two years of

labour peace and a chance to become more familiar with each other and the state of being unionized. The union relies on section 43(19) of the Act which states:

A first collective agreement settled under this section is effective for a period of two years from the date on which it is settled and it may provide that any of the terms of the agreement, except its term of operation, shall be retroactive to the day that the Board may fix, but not earlier than the day on which notice was given under section 16.

It is the union's further argument that this provision overrides section 63(18) of the Act which says that a collective agreement ceases to operate after the Board declares that a termination application has been successful.

40. The union suggests that the Board has the discretion to decide whether the termination application is timely, based on the date of the first contract application when the union made the collective agreement proposal.

41. It is further argued that the Board also has the discretion, pursuant to section 111(2)(k) of the Act, not to entertain the termination application as it is the second such application filed by this applicant. The Board does not intend to address this argument as it was made by the union prior to the Board ordering a vote, and the Board (panel differently constituted), in its decision of April 11, 1997, dismissed this argument. The union did not seek reconsideration of that decision and it is not open to it to attempt to re-argue this issue before this panel of the Board.

42. Relying on section 111(2)(e) of the Act, the union argues that the Board does not have to open and count the ballots cast in the termination application, but can accept instead the undisputed evidence of the ratification vote as the most recent expression of the employees' wishes which is before the Board. Section 111(2)(e) states:

(2) Without limiting the generality of subsection (1), the Board has power,

• • •

(e) to accept such oral or written evidence as it in its discretion considers proper, whether admissible in a court of law or not;

• • •

43. The union urges the Board to exercise its discretion and labour relations expertise to adjourn the termination application to the open period in the term of the first contract, and to then decide what is to be done with that application. It is argued that the earlier panel of the Board simply voted and sealed the ballot box in the termination application to preserve all options and to postpone the decision on that application. Just as the employer argues that subsequent events have changed the Board's jurisdiction in the first contract application, the union argues that the same can be said for the termination application - which heretofore had been filed after the first contract application, and is now alleged to be timely because of the employer's timing in accepting the union's proposed collective agreement.

\* \* \*

44. Having considered all of the submissions made, the Board finds that it cannot view the ratification vote as an expression of employee wishes on the termination application. In the ratification vote the employees were being asked to indicate whether they accepted the proposed collective agreement or not. The Board is not in a position to guess at what may have motivated the employees to vote one way or the other on this issue, and must simply, in the absence of any allegations regarding

the holding of the vote, accept that the membership voted in favour of ratifying the proposed collective agreement. That vote was not a Board-conducted vote.

45. A vote in a termination application is a Board-conducted vote which asks the employees of a bargaining unit whether they wish to continue to be represented by the trade union or not. In the circumstances of this case the Board cannot find that the ratification vote served the same purpose as a termination vote. The Board has already conducted a representation vote in the termination application, but has sealed the ballot box, as the panel of the Board which ordered the vote was of the view that this panel should decide the order of proceeding of the two applications (paragraph 7 of the April 11, 1997 decision).

46. While the Board does have the broad discretion adverted to in the union's argument regarding section 111(2)(e) of the Act, we do not believe this is a situation in which we should exercise that discretion. The employees' ratification vote is not "oral or written evidence" of the sort contemplated by the section. We are of the view that the legislation provides the Board with the discretion to accept such things as hearsay evidence, which may not be admissible in a court of law. However, to accept a ratification vote as a termination vote goes far beyond the scope of an evidentiary ruling.

47. The question remaining before the Board is the status of the first contract application and the termination application. While the employer and the termination applicant made some submissions in this regard, the union only addressed itself to the issue which the parties had agreed would be decided by the Board, namely, whether the ratification vote should be construed as a more timely representation vote for the purposes of the termination application. Prior to ruling on this remaining issue the Board is of the view that the parties should be given an opportunity to make any submissions they wish with respect to how the Board should decide the status of the two applications.

48. The union is directed to make its submissions within 10 days of the date of this decision. The responding party and intervenor will then have 10 days to respond. The union reply should be filed within 5 days of the responses being filed. Each party is directed to deliver to each other and to the Board a copy of its submissions by the deadlines outlined above. Upon the expiration of the deadlines the Board will consider these applications further.

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## **2871-97-U Veronica Low, Applicant v. Ontario Teachers Federation, Responding Party**

**School Board and Teachers Collective Negotiations Act - Strike - Applicant filing unlawful strike application in relation to province-wide action of Ontario teachers - Board explaining its jurisdiction and its process - Board also directing applicant to correct certain deficiencies in the application before it can be further processed**

**BEFORE:** *Bram Herlich*, Vice-Chair.

**DECISION OF THE BOARD;** November 5, 1997

1. The Board is in receipt of an application filed pursuant to section 100 of the *Labour Relations Act, 1995* (the "Act"). Although the information included in the application is somewhat sparse, it clearly pertains to the current action of Ontario teachers.



2. For the benefit of the applicant, it may be useful to explain that the Board is an independent quasi-judicial tribunal that exercises responsibilities under the Ontario *Labour Relations Act, 1995* and other labour legislation. Under its governing statutes, the Board is “court-like” in its processes: it typically makes determinations with respect to the rights of parties, after a hearing in which those parties are entitled to make representations on the factual or legal matters in dispute. The hearings are public, and are conducted in accordance with “rules” specified in the governing legislation or the *Statutory Powers Procedure Act*.

3. Where it is alleged that an individual or organization has acted unlawfully (i.e. contrary to the provisions of a particular statute), it is incumbent upon the complainant to set out the facts or behaviour upon which the complaint is based, and to clearly identify the individuals or parties who have allegedly acted improperly. The dispute also has to be situated in its statutory or legal context - just like any other piece of litigation, where one party is asserting that his/her legal rights have been breached by the actions of someone else.

4. The Board’s procedures are not as formal as those of a Court, nor are parties required to be represented by lawyers. Nevertheless, because legal rights (and remedies) are in issue, it is not unusual for parties to be represented by counsel. And before launching a hearing into the matter, it is important that interested parties (as well as parties against whom direct allegations are made) be given notice of the application and an opportunity to respond prior to the hearing.

5. In other words, unlike some tribunals, the Board does not undertake its own investigation. It adjudicates disputes which are brought before it by interested parties who have carriage of their own case. The Board then makes a determination after hearing what the other parties have to say.

6. The applicant may also wish to review the Board’s Rules of Procedure. For example, the following Rules are relevant to applications of this kind:

12. Any application filed with the Board must include the following details:

- (a) the full name, address, telephone number and facsimile number (if any) of the applicant, of a contact person for the applicant, of the responding party and of any other person who may be affected by the application;
- (b) the sections of the Act that relate to the application, including the sections of the Act that are claimed to have been violated, if any;
- (c) a detailed description of the orders or remedies requested; and
- (d) a detailed statement of all the material facts on which the applicant relies, including the circumstances, what happened, when and where it happened, and the names of any persons said to have acted improperly.

16. Where a party in a case intends to allege improper conduct by any person, he or she must do so promptly after finding out about the alleged improper conduct and provide a detailed statement of all material facts relied upon, including the circumstances, what happened, and when and where it happened, and the names of any persons said to have acted improperly.

17. An application or response may not be processed if it does not comply with these Rules.

18. The Board may decide an application without further notice to anyone who has not filed a document in the way required by these Rules.

20. No person will be allowed to present evidence or make any representations at any hearing about any material fact relied upon which the Board considers was not set out in the application or

response and filed promptly in the way required by these Rules, except with the permission of the Board. If the Board gives such permission, it may do so on such terms as it considers advisable.

21. The Board may also require a person to provide any further information, document or thing that the Board considers may be relevant to a case.

24. Where the Board considers that an application does not make out a case for the orders or remedies requested, even if all the facts stated in the application are assumed to be true, the Board may dismiss the application without a hearing. In its decision, the Board will set out its reasons. The applicant may within twelve (12) days after being sent that decision request that the Board review its decision.

7. The purpose of these Rules is (at least in part) to identify the factual and legal issues in dispute prior to any formal hearing in the matter. Litigation is a time-consuming and expensive process for the parties and the public, so it is important to identify the dimensions of the dispute prior to the hearing.

8. There are several popular misconceptions about the role and function of this Board. Perhaps chief among them is the view that this Board has and exercises some form of plenary or all-encompassing jurisdiction to intervene and resolve all manner of disputes capable of being characterized as labour relations matters. This, of course, is not the case. This Board has and exercises only those powers conferred on it by the Legislature. The Board's power to do anything must be grounded in statute.

9. For this reason, applicants to this Board are well advised to consult and review the relevant statutory material pertaining to their intended applications.

10. For example, while this Board's very existence, jurisdiction and authority are grounded primarily in the *Labour Relations Act, 1995*, section 3(f) of the Act provides that the Act does not apply to "a teacher as defined in the *School Boards and Teachers Collective Negotiations Act* [often referred to as "Bill 100"] except as provided in that Act".

11. Thus, generally speaking the *Labour Relations Act, 1995* does not apply to matters pertaining to teachers.

12. The applicant may, however, wish to review the provisions of the Bill 100. It is likely that she intends to be relying on the provisions of that Act including (but not necessarily limited to) section 67(1) which provides:

67.-(1) Where the Federation, an affiliate or a branch affiliate calls or authorizes a strike or teachers take part in a strike against a board that the board, a member association, the Council or any person normally resident within the jurisdiction of the board alleges is unlawful, the board, member association, Council or person may apply to the Ontario Labour Relations Board for a declaration that the strike is unlawful, and the Board may make the declaration.

13. By performing a careful review of the relevant statutory provisions as well as the Board's Rules of Procedure, an applicant before this Board will be equipped to know what needs to be pleaded, what needs to be proved in order to succeed in an application, the statutory basis of the application and the Board's authority as well as the nature of the remedy or relief available should the application succeed.

14. I note that, again assuming the applicant is intending to rely on the above quoted section of Bill 100, there is nothing in the application to identify a "board" (within the meaning of section 1(1) of Bill 100).

15. In addition to the board which may be involved, there may well be other parties (including for example, affiliates or branch affiliates within the meaning of section 1 of Bill 100) who may be affected and therefore entitled to notice of these proceedings.

16. The applicant appears to be seeking "province-wide" relief in the form, as she has put it, of "the re-opening of all schools across the Province of Ontario". I would merely note that such a request may well be difficult to reconcile with the standing the applicant has to bring the present application.

17. The Board is not prepared, *on the basis of the application as currently filed*, to expedite a hearing in this matter. Indeed, until certain deficiencies in the application are cured, the Board will not process it further.

18. The applicant is directed to:

- (1) set out her detailed pleadings in conformity with Rule 12 set out above;
- (2) to identify the names, address and telephone number and facsimile number (if any) of any other person(s) who may be affected by the application including the name of a board (within the meaning of Bill 100) affected by the application.
- (3) to the extent that she wishes to renew her request that the hearing in this matter be expedited, the applicant must serve copies of the application (including her further particulars), and a blank copy of the response form on all affected parties.

19. The responding party is relieved from its obligation to file a response until such time as the applicant has complied with the Board's directions.

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**2816-96-JD** United Brotherhood of Carpenters and Joiners of America, Local 18, Applicant v. **Rili Construction Weston Ltd.** and Labourers' International Union of North America, Local 837, Responding Parties

**Construction Industry - Jurisdictional Dispute - Carpenters' union and Labourers' union disputing assignment of work in connection with: installation of bolts, ties and other miscellaneous metal attached to forms; installation of neoprene rubber on expansion joints; fabrication and installation of scaffolding, platforms and attached safety rails forming part of formwork; placing, erecting and rough adjusting of column forms; and placing and assembly of shoring frames, screw jacks, U heads, stringers, joists, plywood and bracing - Board upholding employer's assignment of disputed work to composite crew of Carpenters and Labourers**

**BEFORE:** *Inge M. Stamp*, Vice-Chair, and Board Members *F. B. Reaume* and *G. McMenemy*.

**APPEARANCES:** *David McKee* and *Bill Veitch* for the applicant; *Carl Peterson*, *Dan Verrilli* and *John Dicostanzo* for Rili Construction Weston Ltd.; *A. M. Minsky* and *M. Bastos* for Labourers' International Union of North America, Local 837.

**DECISION OF THE BOARD;** December 8, 1997



1. This is an application concerning a work assignment filed with the Board pursuant to section 99 of the *Labour Relations Act, 1995* ("the Act"). A consultation with the parties was held by the Board on February 17, 1997, at which time the Board requested that the parties, clarify the work in dispute.
2. At the continuation of the consultation the parties provided the Board with a signed agreement dated August 18, 1997 setting out what work remains in dispute. The work in dispute was performed in the ICI sector.
3. The parties agreed that the work performed by a "swamper" on this project, who is a member Labourers Local 837, does not form part of the work in dispute.
4. The parties further agree that the stripping of forms and formwork material, shoring for suspended slab work and the rigging of forms and formwork components by crane do not form part of the work in dispute. The parties also acknowledge that this "agreement is without prejudice to the positions of the parties as to why this work is not in dispute as set out in their respective briefs".
5. The parties disagree on whether the "setting and adjusting of components (screw jacks or other materials) for the bracing of forms" are part of the work in dispute. Carpenters Local 18 claims that work is part of the dispute, while the two responding parties dispute the carpenters' claim. By the very positions the parties take with respect to this part of the work the Board finds this is part of the work in dispute.
6. The parties' agreement set out the remainder of the work in dispute as follows:
  1. The installation (the Labourers and Rili would use the word "placing") of the bolts, ties, wedges and other miscellaneous embedded metal attached to forms.
  2. The installation of neoprene rubber on expansion joints.
  3. The fabrication and installation of scaffolding, platforms and attached safety rails forming part of the formwork.
  4. The placing, erecting and rough\* adjusting of column forms (\*final adjusting is carpentry work).
  5. All work in connection with the placing and assembly (at the point of installation) of shoring frames, screw jacks, U heads, stringers, joists, plywood and bracing.
7. When considering jurisdictional complaints filed with the Board under section 99, the Board generally considers the factors first discussed thirty years ago in the *Canada Millwrights Ltd.*, [1967] OLRB Rep. May 195. The Board would refer the parties to the various discussions considering what factors are considered in determining jurisdictional disputes. (See *Acco Canadian Material Handling*, [1992] OLRB Rep. May 537, *Vic West Steel*, [1993] OLRB Rep. March 256 and *Groff & Associates Ltd.*, [1994] OLRB July 846).
8. After reviewing the extensive materials the parties filed with the Board, the agreement of the parties dated August 18, 1997 and after considering the very able and thorough oral submissions of counsel, the Board makes the following ruling.
9. The factors of skill and ability do not assist the Board. Members of both unions are capable of doing the work. The employer's practice is to assign the work to a composite crew in the ICI sector

and to labourers in the residential sector. The area practice is mixed with respect to ICI jobs. The assignment of the work in dispute to a composite crew of carpenters and labourers was a reasonable assignment in the circumstances. The Board is satisfied the assignment was made in good faith and is not persuaded to interfere with the assignment of the work in dispute made by the employer.

10. The complaint is accordingly dismissed.

11. The Board would note the concerns raised by a number of contractors (who provided letters confirming their assignments of the work in dispute) with respect to this issue. It is the contractors' hope that the two unions work out an agreement with respect to the disputed work to assist the employers of their members in competing with contractors in the non-union construction sector.

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**0744-96-JD; 1323-96-JD** Sheet Metal Workers' International Association, Local 562, Applicant v. **Semple-Gooder Roofing Limited**, Bothwell-Accurate Co. Ltd. and United Brotherhood of Carpenters and Joiners of America, Local 785, Responding Parties; Sheet Metal Workers' International Association, Local 562, Applicant v. **Dean-Chandler Roofing Ltd.** and United Brotherhood of Carpenters and Joiners of America, Local 785, Responding Parties

**Construction Industry - Jurisdictional Dispute - Sheet Metal Workers' union and Carpenters' union disputing assignment of work in connection with handling and installation of wood blocking as part of installation of new built-up roofing system at automotive plant - Board upholding employer's assignment of disputed work to Sheet Metal Workers' union**

**BEFORE:** *D. L. Gee*, Vice-Chair, and Board Members *W. N. Fraser* and *G. McMenemy*.

**APPEARANCES:** *J. Raso* and *Ralph Zuccala* for the applicant; *Henry Dinsdale* and *Frank Baxter* for Semple-Gooder Roofing Limited; *Henry Dinsdale* and *Ralph Jamieson* for Bothwell-Accurate Co. Ltd.; *Henry Dinsdale* and *Bob Goodale* for Dean-Chandler Roofing Limited; *N. L. Jesin* and *Gerry Sutton* for United Brotherhood of Carpenters and Joiners of America, Local 785.

**DECISION OF THE BOARD;** December 2, 1997

1. These matters are two applications concerning jurisdictional disputes filed pursuant to section 99 of the *Labour Relations Act, 1995* (the "Act").

2. The work in dispute in both files consists of the handling and installation of wood blocking as part of the installation of a new built-up roofing system at the Toyota Plant, Cambridge, Ontario. In Board File No. 0744-96-JD Semple-Gooder Roofing Limited ("Semple-Gooder") was awarded a contract for the work in dispute from Shimizu Canada Engineering Corporation. Semple-Gooder entered into a joint venture agreement with Bothwell-Accurate Co. Ltd. ("Bothwell-Accurate") pursuant to which Semple-Gooder performed approximately 60 percent of the work and Bothwell-Accurate performed 40 percent of the work. In Board File No. 1323-96-JD, Dean-Chandler Roofing Ltd. ("Dean-Chandler") was awarded a contract for the work in dispute from Ellis-Don Limited. In each case, the work was assigned to members of the Sheet Metal Workers' International Association, Local 562 ("Sheet Metal Workers"). The United Brotherhood of Carpenters and Joiners of America, Local 785 ("Carpenters") claims that the work in dispute should have been assigned to its members.

3. The Board held a consultation in these matters on November 26, 1997. After hearing the representations of counsel for the Carpenters, the Board advised the parties orally that the assignment of the work in dispute in both Board files to members of the Sheet Metal Workers was a proper assignment. In our view, the relevant practice evidence is that relating to a built-up roofing system. The employer practice evidence relating to built-up roofing systems favours the applicant. The area practice evidence with respect to built-up roofing systems favours the applicant or is at best a neutral factor. The factor of economy and efficiency strongly favours the applicant. The factors of employer practice and preference and decisions of record favour the assignment of the work in dispute to the Sheet Metal Workers. The remaining factors are neutral.

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**2616-97-R; 2834-97-U** National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW), Applicant v. **Till-Fab Ltd.**, Responding Party; National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-CANADA), Applicant v. **Till-Fab Ltd.**, Responding Party

**Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Interference in Trade Unions - Intimidation and Coercion - Remedies - Unfair Labour Practice - Employer threatening to shut plant and move to United States if union certified - Board certifying union under section 11 of the Act - Board directing reinstatement of inside union organizer who resigned position because he thought that he would be dismissed following union's loss in representation vote**

**BEFORE:** *Kevin Whitaker*, Vice-Chair, and Board Members *J. A. Ronson* and *H. Peacock*.

**APPEARANCES:** *Eric del Junco*, *John Brady* and *Celia Harte* for the applicant; no one appearing for the responding party.

**DECISION OF THE BOARD;** December 1, 1997

## I

1. This matter consists of an application for certification, an application pursuant to section 96 of the *Labour Relations Act, 1995* (the "Act") and a request for certification pursuant to section 11 of the Act.

2. The matter was scheduled to be heard in Toronto on November 17, 1997, to commence at 9:30 a.m. Counsel for the respondent employer had written to the Registrar in advance, indicating that the respondent would not be participating in the hearing. When the respondent failed to appear by 10:00 a.m. on November 17, 1997, the hearing proceeded in its absence.

3. At the outset of the hearing, the applicant requested that as the respondent had failed to appear, the Board should accept as fact, all allegations set out in the applicant's pleadings and further, that the allegations set out in the respondent's materials be disregarded. The applicant argued that as the respondent had an onus pursuant to section 96 of the Act to prove that it did not act contrary to the Act, in circumstances where it failed to appear, the Board should not require the applicant to call evidence in support of its application under section 96 of the Act.



4. The Board indicated that as the applicant had its witnesses in attendance, it would prefer to hear from them. Accordingly, the applicant called *viva voce* evidence in support of its application and dealt with the issue of the respondent's onus in argument.

5. Following evidence, the Board ruled orally that it was prepared to certify the applicant pursuant to section 11 of the Act and that it would grant the remedies sought by the applicant with the exception of the reinstatement of Mr. Ron Wannamaker. On this last issue, the Board reserved its decision. What follows are our reasons and our decision with respect to Mr. Wannamaker.

## II

6. The respondent is located in Norwich and builds tarpaulins. Roughly thirty persons are employed full-time on two shifts, day and afternoon. Don Legue and Bob Wass are President and Vice-President of the company and the owners. Michelle Cote is the Office Manager. Burt VanLoon was the Plant Manager until he was dismissed on October 23, 1997. While Plant Manager, Mr. VanLoon hired, fired and "ran the operation" from the perspective of production employees. Jeff Shaffer and Ron Wannamaker were employees who acted as "inside organizers" for the applicant.

7. The applicant called as witnesses, Jeff Shaffer, Ron Wannamaker and Burt VanLoon.

8. The applicant filed a certification application on October 15, 1997. At that time, there were 29 employees in the bargaining unit sought by the applicant. Of those, 21 were members or had applied to be members of the applicant.

9. On the morning of October 16, 1997, Mr. VanLoon met with Ms. Cote. She told Mr. VanLoon that Messrs. Legue and Wass were "fed up" given the current situation and that the certification application was the "straw that broke the camel's back". Further she said that they would sell the business to a purchaser who would move it to Tennessee in the United States if it became unionized. She also said that Mr. Legue or Mr. Wass as owners could not threaten employees with the loss of their jobs if they voted for the union, but that nothing precluded Mr. VanLoon from doing it. In response, Mr. VanLoon stated that he would have a meeting with the production workers to tell them that if they voted for the union, they would lose their jobs and the plant would be sold and moved to the United States. Ms. Cote said that this would "help the situation".

10. After his discussion with Ms. Cote, Mr. VanLoon convened a meeting of approximately 17 production workers. Machinery was turned off so that everyone could hear Mr. VanLoon speak. Mr. VanLoon told employees that the company had received notice of the certification application. He handed out small pieces of paper. He told employees to write his phone number on the paper so that they could keep it to use him as a job reference, because the company would be sold and moved to the United States if there was a union. He also told employees that the owners did not want the "hassle" of a union and they already had a buyer and a price negotiated to sell the business to a company in Knoxville Tennessee. The potential purchaser was a company who at that time provided a lot of work to the respondent, something known to all employees. Finally, Mr. VanLoon told employees that if the union was brought in, their wages would be dropped to \$10.00 per hour.

11. Following the meeting with production workers, Mr. VanLoon met with Messrs. Legue and Wass. He told them what he had said to employees. They indicated that they were satisfied with the "message" he had sent.

12. Later that evening, Mr. VanLoon was telephoned at his home by a number of employees. To each one, he explained that the owners of the respondent were upset and did not want a union to be involved.

13. Another employee meeting was held on October 21, 1997 at 4:00 P.M. It was attended by approximately 29 employees, those on both shifts. At the beginning of the meeting, Mr. Legue introduced a Mr. Micallef who was a "labour relations expert". Mr. Micallef proceeded to tell employees that he was hired by the respondent as a labour relations consultant and that employees would be better off having a committee negotiate on their behalf with him rather than to have a union. He acknowledged that the choice was theirs but that they would clearly be better off without a union. He suggested that the union might hurt the interests of employees as well as hurting the respondent. He painted a "bad scenario" if the union's attempt to certify was successful and indicated that "people would be out of jobs".

14. A representation vote ordered by the Board was held on October 22, 1997. The vote results were announced immediately on the close of the poll at 4:45 p.m. The applicant lost the vote by 17 to 12. Immediately after the results were announced, Mr. Wannamaker tendered his resignation to Mr. VanLoon on the grounds that he did not believe that he would be permitted to remain as an employee after having been the person who was known to the respondent as the primary inside organizer. His resignation was accepted and he has not worked since.

15. At the hearing, Mr. Wannamaker testified that the only reason he resigned was because he knew that he would be fired for his role as inside organizer. Had he known that the applicant could still become certified as bargaining agent, he would not have resigned.

16. On October 23, 1997, Mr. VanLoon's employment was terminated. He was offered the choice of resigning with five weeks pay or being fired with two weeks pay. He accepted the five weeks pay and now takes the position that he was wrongfully dismissed.

17. Mr. VanLoon was subsequently told by his replacement Mr. Troy Stewart, that Messrs. Wannamaker and Legue were responsible for bringing in the union and that they should both be fired.

### III

18. In the circumstances, we find that the respondent has breached the provisions of sections 70, 72 and 76 of the Act. We are also satisfied that the requirements of subsections 11(1) to (4) of the Act have been met and that the applicant should be certified as bargaining agent for employees of the respondent. Further, we find the following bargaining unit to be appropriate for purposes of collective bargaining:

all employees of Till-Fab Ltd. in the Township of Norwich, Ontario, save and except supervisors, persons above the rank of supervisors, office, clerical, sales staff and students.

19. Having found in the applicant's favour on the basis of the *viva voce* evidence heard, it is not necessary to rule on the applicant's motion to have the allegations set out in the pleadings to be found as facts.

20. Clearly, Mr. Wannamaker resigned his position because he thought that he would be dismissed following the applicant's loss in the representation vote. He had good reason to believe this and the respondent's illegal conduct as we have found, led to the result of the vote. Mr. Wannamaker however bears some small portion of responsibility for his resignation in that he was unaware that the applicant could still seek certification in any event, despite the loss of the the vote. It is appropriate to order Mr. Wannamaker to be reinstated to his position forthwith. In the circumstances, he will not be reinstated with retroactive compensation.

## IV

21. Accordingly, the Board orders and declares:

- (1) that a certificate shall issue to the applicant;
  - (2) that the respondent Till-Fab Inc. has violated sections 70, 72 and 76 of the Act;
  - (3) that the respondent Till-Fab Inc. is to cease and desist from any further unlawful conduct;
  - (4) that the respondent Till-Fab Inc. is to post a copy of this decision in a conspicuous place in the workplace for a period of 60 days following the date of the decision;
  - (5) that the respondent Till-Fab Inc. is to reinstate Mr. Ron Wannamaker forthwith to the position he held as of October 22, 1997, with wages, seniority, service and any other working conditions that he enjoyed immediately prior to his resignation.
- 

**1016-96-OH Helen Lee, Applicant v. Toronto Hydro, Responding Party**

Health and Safety - Natural Justice - Practice and Procedure - Applicant's request that vice-chair remove himself on grounds of bias dismissed - Applicant alleging that her experience of workplace harassment and continuing discrimination on basis of race amounting to unlawful reprisal contrary to Occupational Health and Safety Act (OHSA) - Board earlier referring applicant to Board's decisions in Meridian and Toronto Board of Education - Applicant directed to show cause why Board ought not to exercise its discretion against inquiring into application - Applicant submitting that Board should hear application for various reasons, including decision made by Human Rights Commission to exercise its discretion to decline to inquire into complaint brought there on basis that complaint was more appropriately dealt with elsewhere - Board noting that applicant's complaint principally about about race discrimination and that reasoning of Meridian case and Toronto Board of Education case was appropriately applied - Board unwilling to allow Commission to decide how Board's discretion to inquire under section 50(3) of OHSA should be exercised - Application dismissed

**BEFORE:** *Kevin Whitaker*, Vice-Chair.

**DECISION OF THE BOARD;** December 9, 1997

## I

1. This is an application pursuant to section 50 of the *Occupational Health and Safety Act* (the "OHSA"). The applicant self-identifies as a "Canadian of Chinese origin". It is alleged that her experience of harassment and discrimination in her employment on the basis of race is a breach of the OHSA, and that continuing discrimination and harassment is a reprisal for purposes of section 50 of the legislation.



2. In March of 1994, the applicant filed a complaint against the respondent, with the Ontario Human Rights Commission (the "Commission"). The complaint alleged discrimination in her employment on the basis of race. The applicant also filed a number of grievances through her union in which she attempted to raise the same issues. Her union, the Canadian Union of Public Employees Local 1 ("CUPE") withdrew her grievances over her objection. She filed an application with the Board (Board File No. 3053-95-U) alleging that CUPE had failed to adequately represent her in these matters. That application was scheduled to be heard by the Board and was then subsequently withdrawn by the applicant in July, 1996. The Commission has declined to deal with her complaint on the basis that it is more appropriately dealt with through the arbitration process under the *Ontario Labour Relations Act* (the "Act"). The applicant's appeal of the Commission's decision to the Chief Commissioner was dismissed by a decision dated May 2, 1997.

3. By decision dated June 11, 1997, the Board observed that the application was about harassment and discrimination on the basis of race and that the reasoning in *Meridian Magnesium Products Limited* ("Meridian") [1996] OLRB Rep. Nov./Dec. 964 and *Selwyn Pieters v. Toronto Board of Education* ("Toronto Board of Education") [1997] OLRB Rep. May/June 541, would appear to apply. The essence of this reasoning is that where a complaint under section 50 of the OHSA is principally about issues of discrimination and harassment on the basis of race or gender, the Board should exercise its discretion to decline to inquire into the matter, on the theory that the complaint is better addressed by the Commission. The applicant was directed to show cause as to why the Board should not proceed to dispose of the complaint in this fashion.

4. The applicant has filed submissions in response to the Board's direction. The respondent has not. For reasons which follow, this application is dismissed.

## II

5. The applicant as a preliminary matter requests that I be removed from this application. The objection is that I am biased and have prejudged the matter. The applicant relies for support on two facts. Firstly, that I chaired the panel of the Board that heard and decided *Toronto Board of Education*, supra. Secondly, that in the earlier Board decision in this matter of June 11, 1997, I indicated that the complaint would appear to be appropriately dealt with on the same basis as the applications in *Meridian* and *Toronto Board of Education*. The applicant seeks to have another panel of the Board deal with the matter.

6. The fact that I chaired the panel of the Board in *Toronto Board of Education* cannot preclude me from dealing with this matter. On this theory, once an adjudicator has decided a question of law, he or she would be precluded from dealing with any other subsequent matter where the same issue must again be decided. It is in the nature of administrative tribunals that similar questions and issues continue to be raised in subsequent proceedings. It is precisely for this reason that such tribunals are often staffed by adjudicators who are selected for their particular expertise - because they *are* familiar with and have thought about these issues.

7. Similarly, where it is apparent on the face of a pleading, that an application may not succeed based on past jurisprudence, there is nothing inappropriate about drawing this to the attention of the parties *and* then to provide them with an opportunity to explain why this preliminary observation is incorrect. The Board should not require parties to relitigate issues at public and private expense, that have already been determined.

8. Parties are entitled to an opportunity to explain, in circumstances such as these, why it is that their case is different from decided cases which at first blush, may appear to be similar. Parties are

also entitled to have an adjudicator assess their submissions in this regard fairly and with an open mind. Accordingly, the applicant's request to have me removed from this matter is dismissed.

### III

9. Turning to the merits of the applicant's submissions, three points are made which will be dealt with sequentially:

- (i) that the decisions in *Meridian* and *Toronto Board of Education* are wrong;
- (ii) that in this case, the Board should hear evidence concerning the dysfunction of the Commission;
- (iii) that in any event, the Commission has already deferred to the Board and it would be pointless to indicate that the Commission should now deal with the matter.

10. With respect to the first point, the issue of deferral on the basis of characterization was considered at some length in *Meridian* and *Toronto Board of Education*. I will not repeat the reasoning in those decisions but only remark that the applicant has made no submissions here which were not already considered in the two prior decisions. This argument fails.

11. On the second point, the applicant wishes to call evidence to establish that the Commission is ineffectual and fails to supervise the Code. This issue was addressed in *Toronto Board of Education*. I will not repeat the reasoning set out there. The applicant has made no submissions here not already considered. This argument fails.

12. On the last point, the Commission has exercised its discretion to decline to inquire into the complaint brought there by the applicant, on the basis that it is more appropriately dealt with elsewhere. This is pursuant to section 34(1)(a) of the Code.

13. The applicant is wrong to suggest that the Commission has deferred to the present process before the Board. What the Commission has done is to defer to the *arbitration process* provided for under the *Ontario Labour Relations Act, 1995* (the "Act"). No mention is made of the process invoked by the applicant here pursuant to section 50 of the OHSA.

14. As I have noted earlier, the applicant filed grievances which CUPE declined to proceed with. She brought a subsequent complaint against CUPE challenging its decision not to proceed with her grievances and alleging a breach of section 74 of the Act. This complaint was scheduled for a hearing before the Board pursuant to section 96 of the Act. As noted in the Board's decision in Board File No. 3053-96-U dated July 11, 1996, represented by her agent in the present matter, the applicant withdrew her complaint against CUPE.

15. There is no doubt from the pleadings filed by the applicant that this matter is principally about discrimination on the basis of race. What distinguishes this case from *Meridian* and *Toronto Board of Education* is that the Commission has determined that it will not deal with the matter and that it is appropriately dealt with by a board of arbitration. The applicant embarked on that path and when CUPE did not proceed with her grievances, she continued to pursue this process by seeking an order from the Board to compel CUPE to proceed to arbitration. After a hearing on this matter was scheduled before the Board, she chose to abandon the arbitration route.

16. Should the Board exercise its discretion to inquire into this matter where it would not otherwise, only because the Commission has deferred to the arbitration process and the applicant has abandoned her attempts to proceed to arbitration? In my view it should not. It is difficult on any reading of the application, to see how the Commission could have concluded that the matter is dealt with *more* appropriately by arbitration, particularly when CUPE who had carriage of the grievances, had decided not to proceed with them at the time that the Commission dealt with the issue of deferral. Right or wrong, the Commission's decision in this regard is not binding on the Board. If the Board were to proceed with the present application at this point, it would in fact be permitting the Commission to decide how the discretion to inquire under section 50(3) of the OHSA should be exercised. In other words, the decision as to whether the Board should inquire or not, would be dependant only upon whether the Commission proceeded with the complaint before it. One also has to question why it is that the applicant abandoned her attempts to have CUPE proceed to arbitration. This issue was scheduled to be adjudicated before the Board in the application under section 74 of the Act - until the applicant withdrew that matter, presumably with the advice of her current representative.

17. For these reasons, this matter is dismissed.

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**2175-96-R; 2254-96-U** Labourers' International Union of North America, Local 607, Applicant v. **Wilco Landscape Contractors Ltd.**, Responding Party

**Certification - Construction Industry - Union seeking to represent construction labourers employed by landscape contractor - Board not accepting submission that employer (and employees) engaged in horticulture and that the Act accordingly does not apply pursuant to section 3(c) of the Act**

**BEFORE:** *Robert Herman*, Alternate Chair.

**APPEARANCES:** *John Moszynski, Gino Russo and Tony Neil* for the applicant; *Peter Maat* for the responding party.

**DECISION OF THE BOARD;** December 4, 1997

1. This is an application for certification, arising in the construction industry, and a related unfair labour practice application.

2. A number of issues were dealt with previously by the Board, and were the subject of oral rulings, with reasons also provided orally. These applications are now scheduled to resume, to deal with the union's allegation that the employer has committed various unfair labour practices, and its request that it be certified pursuant to the provisions of section 11 of the *Labour Relations Act, 1995*.

3. I am not seized with the remaining matters. The instant decision is issued to set out the various oral rulings previously made by the Board.

4. The first issue dealt with the applicability of section 3(c) of the Act. Section 3(c) reads as follows:

3. This Act does not apply,

• • •



- (c) to a person, other than an employee of a municipality or a person employed in silviculture, who is employed in horticulture by an employer whose primary business is agriculture or horticulture;

• • •

5. The Act does not apply to a person who is employed in horticulture by an employer whose primary business is agriculture or horticulture. The responding employer asserted that it was a landscape contractor, with the majority of its work being of a landscaping nature, and that the Act did not therefore apply to it, as it was engaged in horticulture.

6. The Board provided the following decision orally at the hearing:

The responding employer relies upon the provisions of section 3(c) of the Act, to assert that it is engaged primarily in the business of horticulture.

It is important to understand what is in issue here. First, it is not asserted by the responding employer that it is engaged in agriculture. Second, section 3(c) of the Act deals with individuals. It is a subsection which deals with whether persons or individuals might not be covered by the provisions of the Act. Third, the test described in section 3(c) is two-fold in nature. To be excluded from coverage of the Act, the primary business of the employer must be horticulture (at least in the circumstances herein, where the employer only asserts that it is engaged in horticulture) *and* the person in question must himself or herself be employed in horticulture.

Thus, if I were to decide that the primary business of the responding employer was horticulture, then those employees, if any, not actually employed in horticulture would nevertheless be covered by the provisions of the Act, as it states in section 3(c) itself.

Turning to the evidence, in balance I conclude that the primary business of the responding employer is not horticulture. There are several factors or reasons which have led me to this conclusion. Looking at the nature of the projects engaged in by the responding employer, the majority of those projects, numerically, appear to involve only landscaping, and they include projects such as sodding, hydro seeding, and putting in trees. However, the majority of the overall work of the responding employer is not landscaping, nor is it horticulture. This employer is in the business of construction contracting, albeit with a meaningful landscaping component, and even though the trees utilized by the company are grown by the company itself. The employer's business has various components or aspects. In characterizing the nature of the business, one must look to the business in its entirety, and when one does so here, I conclude that the business of the responding employer is one of various types of contracting. Some of its business involves landscaping contracting, some of it involves roads contracting, and some meaningful portion of the business is of a general construction contracting nature.

In seeking business and in performing its business, the employer sometimes engages in general contracting. In those cases, even though its own employees might only do landscaping work, the *business* that the company is engaged in is one of general contracting, whether it involves landscaping or some other type of work. It is acting as a general contractor, and it subcontracts out various portions of the work. The business the company engages in is not only the landscaping work that some of its direct employees may perform, but the nature of its business is given content and meaning by the totality of what the company does.

The employer asserted in its submissions that it only bids on non-landscaping jobs in order to be able to secure the landscaping component of those jobs. Apart from the fact that there is no evidence of this whatsoever before the Board, even if it were true, on the evidence that is before the Board, I would conclude that the company is still engaging in a business which is not primarily of a horticultural nature. Rather, it is of a construction nature, which has a landscaping component in many, but not all, of the contracts it obtains.

In balance therefore, I conclude that the company is not engaged primarily in the business of horticulture.

Alternatively, even if it is engaged primarily in horticulture, it appears that a significant number of the employees are not themselves employed in horticulture but are employed in construction work, work such as putting up guard rails or wires, breaking up concrete, removing concrete, and building docks. The evidence did not indicate that these employees were also "employed in horticulture" to any meaningful extent. These employees would still be covered by the Act, and the application would still continue. In the result, the application will proceed and will not be dismissed.

7. The Board also found that the appropriate bargaining unit was the unit requested by the applicant union in its application, as it was a standard bargaining unit for the construction industry, referring to the ICI sector and all other sectors in the Board area in question, insofar as construction labourers were concerned.

8. A representation vote was directed and held, with a number of the ballots cast segregated and the box sealed, pending the resolution of various challenges to the entitlement of certain individuals to vote. The Board next turned to those challenges.

9. With respect to the five individuals who were listed on the Voters' List Schedule "A", as #'s 2 (Bakker), 3 (Brink), 10 (Dysievick), 11 (Flint), and 14 (Hogan), the Board ruled that none of them were in the bargaining unit at the relevant time, and accordingly were not eligible to vote. None of them were performing work in the ICI sector on the application date, nor were they working in the other sectors in Board Area #22, the area in question. Accordingly, none of them properly fell within the bargaining unit at the relevant time.

10. After this ruling, the responding employer withdrew its challenges with respect to employees #6, 7, 19, and 20 as listed on Schedule "A". This left in dispute employees #4, 5, 16, 17, and 22.

11. With respect to employee #5, Alice Cramer, the Board ruled that she did not properly fall within the bargaining unit. She was working in the nursery, pruning trees, and did not fall within a bargaining unit consisting of construction labourers.

12. With respect to employee #16, Donald Ladelle, the Board ruled that his ballot would not be counted. On the application date, he was engaged in repairing machinery and vehicles. This work is not commonly associated with construction labourers, and is not generally the work of those in the bargaining unit. Accordingly, he did not fall in the bargaining unit at the relevant time and his ballot would not be counted.

13. With respect to employee #4, Leo Chaschuk, the Board similarly ruled that he was not engaged in the bargaining unit at the relevant time, and his ballot would not be counted. He was driving a brushcutter on the application date, which is not work of a construction labourer, and he spent the majority of his time on the application date engaged in this work.

14. With respect to employee #17, Chris Leisander, the Board ruled that he did not exercise managerial functions, at the relevant time, and he was an "employee" for purposes of the Act. Although he did have some involvement in hiring, one had to consider all the circumstances. Where to draw the line in construction, with respect to whether an individual is a working foreman properly falling within the bargaining unit, or is to be excluded from the bargaining unit, is a very difficult question, and will always depend on the facts. Given the nature of the business, how it was conducted, the projects involved, their geographical remoteness, and Mr. Leisander's role in the incidents put in issue by the parties, the Board concluded that he had acted as a working foreman, and as such fell properly within the bargaining unit. Mr. Leisander's ballot was therefore to be counted.

15. With respect to the final individual challenged, employee #22, Dan Defeo, the Board concluded that Mr. Defeo had not worked on the application date, although he had assisted the employer

for some short period that day. He would show up at the yard each day, help load the truck, and wait to be assigned, or wait to be told that there was no work available for him that day. Neither Mr. Defeo or the employer treated his loading of the truck as paid work if he was not assigned to work that day. There was nothing to suggest that anything different happened on the application date, in terms of this arrangement. This was not a question of a waiver, but rather a question of ascertaining the terms and conditions of employment. Although he worked on the application date for some period greater than five minutes, but substantially less than one hour, that arrangement of voluntary work still prevailed. This was the accepted business arrangement at this company. Accordingly, even though he did some work on the application date, it was not paid work and he was not doing so as a paid employee, and was therefore not working on the application date such that his ballot should count.

16. After making these various rulings, in the presence of the parties the Board unsealed the box and counted the ballots that were to be counted. There were four votes cast in favour of the applicant and five votes cast against representation by the applicant.

17. The parties were given an opportunity to examine the individual ballots, and they agreed that they had no objection to the manner in which the ballots were counted.

18. In the result, more than fifty percent of the ballots cast were not cast in favour of applicant, and accordingly the applicant was not certifiable as a result of the representation vote. The Registrar is to destroy the ballots cast in this application.

19. Given the results of the vote, it was necessary to proceed with the union's application pursuant to section 11 of the Act, and the related unfair labour practice complaint.

20. This matter is referred to the Registrar.

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**1711-97-M; 1925-97-U William Neilson Ltd., Applicant v. The Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union 647 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Responding Party v. Group of Employees, Objectors; Sean Donovan et al., Applicants v. William Neilson Ltd. and Teamsters Local 647, Responding Parties**

**Adjournment - Collective Agreement - Duty of Fair Representation - Practice and Procedure - Ratification and Strike Vote - Unfair Labour Practice - Union and employer making joint request for early termination of collective agreement - Union and employer seeking to replace collective agreement with new 6-year agreement - Union and employer negotiating (and employees ratifying) new 6 year agreement after employer announcing plant closure - New agreement containing various "concessions", but also including increased severance package and provision allowing employees who had already accepted severance packages to revoke their acceptance and return to employment - Objecting employees alleging that union violated its duty of fair representation and asking Board to deny joint request - Board denying adjournment requested by objecting employees' counsel who had been retained on the day before the hearing - Board finding that union made good faith efforts to balance competing interests of its members - Board dismissing challenge to ratification vote based on union allowing departed (or departing) employees to vote on new collective agreement - Unfair labour practice complaints dismissed - Board consenting to early termination of collective agreement**

**BEFORE:** *R. O. MacDowell*, Chair, and Board Members *J. A. Ronson* and *D. A. Patterson*.



**APPEARANCES:** *Michael G. Sherrard and Robert Kelly* for the company; *Michael C. P. McCreary, Bill Overy and Pat Powers* for the union; *Michael W. Tesluk and Sean Donovan* for the objectors.

**DECISION OF THE BOARD;** December 17, 1997

I - WHAT THIS CASE IS ABOUT

This is a joint request for early termination of a collective agreement that was scheduled for consideration by the Board on September 18, 1997, along with a related unfair labour practice complaint.

The joint request for early termination, concerns a collective agreement (which we will refer to here as "the old agreement") that runs from January 1, 1996 to December 31, 1998. The union and the employer seek the Board's consent to end this agreement early, so that it can be replaced by a newly-negotiated 6-year agreement. The union and the employer assert that the new agreement will provide commercial and labour relations stability for a facility that might otherwise be closed; moreover, they point out that the new agreement has been endorsed by employees in a ratification vote held on August 1, 1997. In their submission, the new agreement is an important part of the plan to save the plant as a going concern.

The objecting employees challenge the way in which that ratification vote was conducted, and assert that the union has acted in a manner that is "arbitrary, discriminatory, or in bad faith".

The *Labour Relations Act* includes the following provisions:

58. (3) A collective agreement shall not be terminated by the parties before it ceases to operate in accordance with its provisions or this Act without the consent of the Board on the joint application of the parties.

• • •

(5) Nothing in this section prevents the revision by mutual consent of the parties at any time of any provision of a collective agreement other than a provision relating to its term of operation.

\* \* \*

44. (1) A proposed collective agreement that is entered into or memorandum of settlement that is concluded on or after the day on which this section comes into force has no effect until it is ratified as described in subsection (3).

• • •

(3) A proposed collective agreement or memorandum of settlement is ratified if a vote is taken in accordance with subsections 79(7) to (9) and more than 50 per cent of those voting vote in favour of ratifying the agreement or memorandum.

\* \* \*

79. (7) A strike vote or a vote to ratify a proposed collective agreement or memorandum of settlement taken by a trade union shall be by ballots cast in such a manner that persons expressing their choice cannot be identified with the choice expressed.

(8) All employees in a bargaining unit, whether or not the employees are members of the trade union or of any constituent union of a council of trade unions, shall be entitled to participate in a strike vote or a vote to ratify a proposed collective agreement or memorandum of settlement.

(9) Any vote mentioned in subsection (7) shall be conducted in such a manner that those entitled to vote have ample opportunity to cast their ballots. If the vote taken is otherwise than by mail, the time and place for voting must be reasonably convenient.

\* \* \*

74. A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be.

## II - THE ADJOURNMENT REQUEST

The request for early termination of the “old collective agreement” was filed with the Board on August 11, 1997. Notice of that request was posted in the workplace on August 15, 1997. The unfair labour practice complaint was filed by the objectors on August 26, 1997.

By decision dated August 28, 1997, the Board (differently constituted) determined that it was appropriate to hear the two matters together, and ruled as follows:

The applicants to the section 58(3) application and the responding parties to the section 96 application are hereby directed to file any submissions and response they may wish to make to the Notice of Objection and the section 96 application no later than September 5, 1997, 5:00 p.m. Therefore, the filing time for the response to the section 96 application is abridged to September 5, 1997.

By decision dated September 11, 1997, the Board directed that these matters be dealt with expeditiously and directed that the hearing would take place, in Toronto, on Thursday, September 18, 1997. A copy of that decision was transmitted to the parties and posted in the workplace.

Given the context (see below for more detail), the Board determined that these matters should be addressed and resolved quickly; for, as will be seen below, the company had interrupted its plant shutdown plans on the strength of the vote and the new collective agreement that the objectors are now challenging. It was important to deal with the case expeditiously.

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At the opening of the hearing on September 18, 1997, Mr. Tesluk, a lawyer, appeared on behalf of the objecting employees, for the purpose of seeking an adjournment. Mr. Tesluk told the Board that he had been retained the night before, and that he had not had an opportunity to prepare for the proceeding. He also told the Board that he was not able to remain, for long, on September 18, 1997, because he had a real estate “closing” to attend to later in the day. Mr. Tesluk requested “a week’s adjournment” so that he could consider his clients’ position and prepare his submissions. !

The union and the employer (“the institutional parties”) opposed the requested adjournment.

Counsel for the union and counsel for the employer both noted that the notice of early termination had been posted in the workplace on August 15, 1997, with a terminal date (for interventions/submissions) of August 25. The objectors’ own complaint was filed on August 26, 1997. And the Board abridged time limits so that it could address these matters expeditiously. In counsel’s submission, the objectors knew of these proceedings (including their own) in August, and had ample opportunity to seek legal advice. The objectors also knew that the company had interrupted its shutdown plans on the strength of the “new agreement”, and that employees had been told, throughout, that the company needed to have the new agreement put in place immediately.

The institutional parties submitted that the objectors could have retained counsel in advance of the hearing (certainly before the evening of September 17), and could have sought out someone who was available to represent them on the days already fixed for hearing. Neilsons reiterated - as it did to the union, and to its employees in August - that there were pressing commercial considerations which had to be finalized if the plant was to remain operational. That is why the vote had been scheduled quickly, that is why the institutional parties pressed for an early hearing date, and that is why the institutional parties were present, with their witnesses, ready to proceed on the scheduled hearing day.

Counsel further submitted that the facts were not substantially in dispute so that, in all likelihood, the case could be completed in the time already set aside for it. Conversely, if the matter were adjourned as the objectors requested, it was by no means clear that the Board actually could return to it in the following week. In this regard, the request for a "one-week adjournment" is a little misleading: given the Board's current resources, if the scheduling hearing day were derailed, it might actually be some time before the Board and the parties could reassemble. Accordingly, the union and the employer urged the Board to reject the adjournment request.

\* \* \*

The Board's discretion to grant or refuse an adjournment has been discussed in such cases as: *Nick Masney Hotels Ltd.* (1970), 13 D.L.R. (3d) 289; *Journal Publishing Co. of Ottawa Ltd. et al. v. Ottawa Newspaper Guild, Local 205 et al.* (unreported, March 31, 1997, Ontario Court of Appeal); and *Re Flamboro Downs Holding Ltd. and Teamsters Local 879* (1979), 24 O.R. (2d) 400. In the *Flamboro Downs* case, the Divisional Court put it this way:

Clearly, an administrative tribunal such as the Labour Relations Board is entitled to determine its own practices and procedures. Whether in a given case an adjournment should or should not be granted is a matter to be determined by the Board charged as it is with the responsibility of administering a comprehensive statute regulating labour relations. In the administration of that statute the Board is required to make many determinations of both fact and law and to exercise its discretion in a variety of situations. In the case of a request for adjournment, it is manifestly in the best position to decide whether, having regard to the nature of the substantive application before it, the adjournment should be granted or whether the interests of the employer, the employees or the union who, as the case may be, oppose the adjournment should prevail over the party seeking it. As a matter of jurisdiction, it is for the Board to decide whether it should adjourn proceedings before it and in what circumstances.

This is not to say that there cannot be situations in which a refusal to grant an adjournment might amount to a denial of natural justice. There are circumstances in which that might be so: see, for example, *R. V. Ontario Labour Relations Board, Ex p. Nick Masney Hotels Ltd.* [1970], 3 O.R. 461, 13 D.L.R. (3d) 289 (C.A.); *Re Gill Lumber Chapman (1973) Ltd. and United Brotherhood of Carpenters & Joiners of America, Local Union 2142* (1973), 42 D.L.R. (3d) 271, 7 N.B.R. (2d) 41. It is necessary to examine the facts of each case to determine if the tribunal acted, as it must, in a fair and reasonable way. It must, of course, comply with the provisions of *The Statutory Powers Procedure Act*, 1971, [R.S.O. 1990, c. S.22] and afford the parties the opportunity to be present and be represented, if they wish, by counsel. *But a party who has adequate notice of the hearing does not have a right to an adjournment and is not entitled to insist on one for his convenience or the convenience of his representative. It is for the Board to determine whether to adjourn on the basis of the obvious desirability of speedy and expeditious proceedings in labour relations matters, the background of the particular case, the issues involved, the reason for the request and other like factors.*

(emphasis added)

\*

After considering the parties' representations in the instant case, the Board ruled (orally) that under the circumstances, it was not prepared to grant the objectors' request for an adjournment.



The Board was satisfied that the objectors had had a reasonable opportunity to retain and instruct counsel in respect of their own application and the companion request for early termination; moreover, there were good commercial and labour relations reasons for dealing with the case expeditiously - as urged by the institutional parties. The Board did not think that the complainant's last-minute selection of counsel warranted an adjournment where, as here: the case was relatively simple and straightforward; there had been sufficient time to prepare, choose and instruct counsel; the hearing date was clearly fixed with expedition in mind; all parties had notice of that hearing date; the union and the employer, at some expense, were in attendance with their counsel and their witnesses ready to proceed on the scheduled date; adjourning might engender several weeks' delay; and labour relations and commercial considerations both supported an early resolution of the parties' dispute.

Following this ruling, Mr. Tesluk withdrew from the hearing, and the parties met with a view to forging an agreement on the facts.

As it turned out, the facts were not really in dispute, and no formal testimony was necessary.

### III - BACKGROUND

William Neilson Ltd. ("Neilsons") operates a dairy processing and warehouse distribution facility in Georgetown, Ontario. The employees working at that facility are represented by Teamsters Local 647.

The union and the employer have a "mature" collective bargaining relationship, that has been in place since the mid-1950s. The parties estimate that, over the years, they have successfully negotiated some 15 collective agreements applying to the Georgetown plant.

The most recent collective agreement (what we have called "the old agreement") was negotiated in the spring of 1996, and runs from January 1, 1996 to December 31, 1998. There is no evidence that the bargaining preceding the 1996-98 collective agreement focused on the closure of the Georgetown facility, or that such closure was as clear as it later became.

On or about February 24, 1997, (i.e. one year into the old agreement) Neilsons announced that a decision had been made to close the Georgetown undertaking. The scheduled closure date was March 1998 - that is, about a year later, but still during the currency of the 1996-98 collective agreement.

Following the announcement of the planned closure, the union and the company met and negotiated what they describe as a "closure agreement". That agreement amended the 1996-98 collective agreement to provide for enhanced severance and termination packages for employees affected by the anticipated shutdown. The bargaining committee for the "closure agreement" included Pat Powers, the union official responsible for the bargaining unit(s), and six local union stewards.

At that point, closure seemed inevitable. It was just a matter of time.

Sometime in the late spring or early summer of 1997, Neilsons approached the union and its bargaining committee and suggested that despite its earlier announcement (and existing plans), it might be prepared to continue operations at the Georgetown facility - provided that the union agreed to concessions which would make the operation viable. With that in mind, the parties entered into further negotiations to see whether a deal could be struck that would keep the plant open.

Initially, the negotiating committee refused to take any of the company's proposals to the membership, because it felt that the concessions demanded by the company were too severe. The union informed Neilsons that employees were opposed to the company's proposals, and that there were a number of

areas of concern. Nevertheless, during the last week of July 1997, Mr. Powers was presented with what was described as the company's "final offer" (an offer that he did not solicit).

The company warned the bargaining committee that if the "final offer" was not acceptable, the company would proceed with its shutdown plans as had previously been announced. The dismantling and transfer of machinery was scheduled to begin immediately, and once that process began, the closure was a certainty.

Powers concluded that the union should put this "final offer" to the employees for their consideration in a ratification vote, because the company had advised the union that if the company did not obtain concessions *by August 1, 1997*, it would begin removing certain machinery from the plant, and the facility would certainly close. In other words, by the end of July 1997, the company was prepared to begin implementing the plant closure that it had previously announced, unless its proposed concessions were accepted. On the other hand, if a new deal was ratified, the company indicated that it would reverse the process that was then underway. But it needed a decision - and soon.

The details of the proposed "concessions" need not be set out here. It suffices to say that they included: increased severance packages for affected employees and some protections for employees who feared discriminatory treatment - all of which were to be rolled into a *new* 6-year collective agreement. The new agreement would replace the one then in place, and would guarantee a period of stability while the company got its affairs in order.

The parties also reached an agreement which would allow employees who had already accepted severance packages, to revoke their acceptance and return to employment. This proviso was agreed to because, at the time of the employees' original decision to accept or reject Neilsons' severance proposal, the employees' understanding was that the facility would inevitably be closing. That is what had been communicated to them. Now, however, there was a reasonable prospect that the plant would stay open. So, as a matter of fairness, the bargaining parties thought that departing employees should be given an opportunity to reconsider their options. In effect, the union and the employer agreed to treat the workers who had accepted severance packages like other employees in the bargaining unit, and all such employees were invited to consider the company's proposals for a new 6-year agreement.

The proposed new collective agreement was finalized on or about Wednesday, July 30, 1997. The union agreed to conduct an immediate ratification vote - bearing in mind, as we have already noted, that the company had already arranged for the transfer of certain equipment which was essential to the plant's continuing operation.

A representative of Neilsons provided the union stewards with an updated list of bargaining unit members, together with their home telephone numbers, so that the stewards could notify the membership, by telephone, during the afternoon of Wednesday, July 30, 1997. Mr. Powers instructed the stewards at the Georgetown facility to call all bargaining unit employees by telephone, and all of those employees were either spoken to personally, or a message was left on their answering machines. The vote was to take place on Friday, August 1, 1997, between 10:00 a.m. and 4:00 p.m.

There is a dispute about whether the vote should have been called so quickly and whether the company was "bluffing" when it warned that it would begin dismantling the machinery if there was not a positive vote on August 1, 1997. However, there is no real dispute that the employees in the bargaining unit had notice of the ratification vote; or that copies of the proposed changes to the collective agreement were distributed to employees on Tuesday, July 31, 1997, the day before the vote was taken.

The evidence before this Board is that the company's plan to move its machinery was neither a "threat" nor a "bluff". It was a settled plan that the company was prepared to abort if it was commercially feasible to keep the plant open. But that required the union's agreement to the new collective agreement.

The ratification vote was conducted by secret ballot and was overseen by David Balfour, the most senior bargaining-unit employee in the plant. There is no challenge to the regularity or sufficiency of the balloting.

On August 1, 1997, approximately 87 individuals attended the union meeting, and 77 of them cast ballots. The vote was in favour of accepting the proposed new collective agreement. The results of the vote were: 51 ballots cast for the new agreement, 23 ballots cast against the proposed agreement and 3 spoiled ballots.

No information meeting was held prior to the day of the vote - although the issues were discussed and fully canvassed with the bargaining-unit members on the day of the vote. However, it is not the practice of Teamsters Local 647 to have a formal information meeting the day prior to voting on a proposed new collective agreement.

Teamsters Local 647 did *not* recommend the new collective agreement to the membership. In fact, when asked by employees, Mr. Powers advised them to vote *against* the company's proposal. However, despite his own opinion, Mr. Powers felt that a vote was necessary, given that the employer's operations were scheduled to be closed. Mr. Powers concluded that, in the circumstances, the employees should be given an opportunity to vote on a proposal which, the company said, would forestall the plant closure. And, despite Mr. Powers' own reservations, there may have been other local union officials or stewards, who urged their co-workers to vote *in favour* of the company's proposals.

All employees actively at work in the bargaining unit were permitted to vote. In addition, the union accepted ballots from those who had already accepted severance or termination packages (i.e. the less generous amounts under the old agreement that were offered and accepted on the understanding that the facility would certainly close). These individuals were allowed to vote both because they were given the option of returning their severance and termination packages and returning to work if the membership voted in favour of the collective agreement and the employer's operation continued, and because the employer's proposal included an *enhanced* severance package for employees wishing to sever their employment relationship with the employer.

In the circumstances, the union concluded that all of its members would be affected by the proposals, and that all of its members should therefore be given an opportunity to vote. Nevertheless, because there is a complaint about the participation of individuals who had already accepted (reduced) severance packages, it might be noted that *even if their ballots had been segregated or discarded, the vote results would have been strongly in favour of the company's proposed new collective agreement.*

In other words, the company's proposal would have been accepted even if all of the ballots challenged by the objectors had been segregated and not counted. And, of course, as union counsel observed, if the departing employees had *not* been allowed to vote, and the results had gone the other way, the individuals excluded from casting a ballot might be mounting the same challenge as the objecting employees do.

There is no "representation question" raised either on the facts or by the objecting employees. No one seeks to challenge the union's status as bargaining agent. The complaint is about the way in which the vote was conducted; and, in particular, the union's decision to include the new severance arrangements in the package to be voted on, and to accept ballots from the broader voting constituency described above.



The objectors want the Board to direct a new ratification vote in which their departed (or potentially departing) fellow workers will not be permitted to cast ballots.

The objectors want the severance package severed from the proposed new collective agreement before any voting is permitted, because, they say, it is an unfair inducement to “accept the deal”.

The objectors submit that those entitled to vote should be confined to individuals who have to “live under” the proposed new 6-year agreement.

#### IV - DECISION

There is no foundation for the objectors’ claim that the union has contravened section 74 of the Act. The union has not acted in a manner that is “arbitrary, discriminatory, or in bad faith”. On the contrary. The union has made substantial and good faith efforts to balance the competing interests of its members - including those who have been given a further opportunity to respond to the company’s shifting commercial demands, and those who may be departing from the bargaining unit as a result of reorganization or restructuring.

The union’s position is eminently sensible; and whether or not an outsider would have come to the same conclusion, it cannot be said that the union has acted improperly.

Insofar as section 74 is concerned, the unfair labour practice complaint is dismissed.

\* \* \*

The objectors’ challenge to the ratification vote is two-fold: that the severance arrangements were included in the package put to the voters for ratification; and that persons who had departed or were departing from the unit were permitted to cast ballots. As the objectors’ representative put it: departing employees had an unfair inducement to support the proposal, and persons were permitted to vote who would not have to “live” under the concession-laden 6-year agreement.

There is no basis for the first objection. Indeed, since the severance arrangements were to be included in the new collective agreement, the union was obliged to put it to the voters.

The second objection is more difficult because it might be said that the union permitted participation by individuals who, strictly speaking, were not “employees in the bargaining unit” at the time that they cast their ballots. However, that characterization is flawed for two reasons.

In the first place, in a collective-bargaining context, the notion of “employment” (let alone employment *in a bargaining unit*) does not necessarily follow common law rules. In a collective-bargaining environment, individuals may well be considered “employees” (for various purposes) who would not be so considered to be employees in other contexts or for other purposes (see, for example, the decision of the Ontario Court of Appeal in *Blouin Drywall Contractors Ltd.* (1975), 8 O.R. (2d) 103, and the decision of the Supreme Court of Canada in *Maritime Employers Association* [1979], 1 S.C.R. 120). In a collective-bargaining environment, it is not at all unusual for individuals to be considered “employees in a bargaining unit”, even though they are not actively at work, and might not have been considered “employees” at common law.

In addition, in this particular case, *the collective bargaining parties have agreed* (as they are entitled to do) that persons who might have nominally severed their employment at an earlier time, were to be restored to their former status for the purposes of reconsidering their options. The individuals in question are not strangers, nor, given the parties’ agreement, have they irrevocably severed their connection to, or interest in, the bargaining unit. In view of the parties’ agreement, they are more like

“laid-off” employees than “former” employees, and the parties have agreed - not unreasonably - to treat them that way.

Finally, as we have already indicated, even if the ballots of the challenged voters had been segregated and not counted, the agreement would still have been ratified by the majority of employees casting ballots. And the fact that some voters may have later had second thoughts about their choice is now irrelevant.

For all of these reasons, the Board is satisfied that the unfair labour practice complaint should be dismissed.

The Board is also satisfied that it should give its consent to the institutional parties’ joint request for the early termination of their old agreement, so that the “new agreement” can be put in place in accordance with its terms.

\* \* \*

In accordance with the agreement of the parties, on the day following the hearing, the Board issued a “bottom line decision” with reasons to follow. These are the reasons for the Board’s decision.

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## COURT PROCEEDINGS

**1593-96-FC; 1594-96-U; 1626-96-U (Court File No. 637/97) Dover Corporation (Canada) Limited Industrial Division, Applicant v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Brian Keller, Karen Brennan and Larry Bertuzzi, and the Ontario Labour Relations Board, Respondents**

**First Contract Arbitration - Judicial Review - Natural Justice - Reconsideration - Unfair Labour Practices - Board earlier directing settlement of first collective agreement by arbitration - Employer seeking reconsideration of decision on grounds of reasonable apprehension of bias - Employer submitting that apprehension of bias arising because on or about the date of the Board’s earlier decision, vice-chair of the panel entered into a retainer agreement with the Canadian Air Line Pilots Association (CALPA) - Employer also relying on fact that vice-chair had discussions with CALPA regarding the retainer prior to date of Board’s decision - Board not agreeing that circumstances giving rise to reasonable apprehension of bias - Reconsideration request denied - Application for judicial review dismissed by Divisional Court**

Board decision reported at [1997] OLRB Rep. July/Aug. 568. Board decisions dated November 22, 1996 and January 27, 1997 not reported.

*Ontario Court of Justice (General Division) Divisional Court, Farley, B. Wright and B. MacDougall JJ., November 14, 1997.*

**Farley J. (Orally):** The test as to the question of bias is correctness as the Board does not possess any special skills or expertise as to that area (see: *Trent University Faculty Assn. v. Trent University* (1997), 150 D.L.R. (4th) 1 (Ont. C.A.); the test as to the balance of items is patent unreasonableness (see:

*Paccar of Canada Ltd. v. Canadian Association of Industrial and Mechanical Workers, Local 14 et al* (1989), 62 D.L.R. (4th) 437 (S.C.C.) at p. 453).

The applicant Dover submits that former Vice-Chair Stoykewych's involvement in the 1996 decision created a reasonable apprehension of bias. Would a reasonable person informed of the facts and circumstances have objectively come to the conclusion that there was a likelihood of apprehension of bias? We think not. We are unable to conclude that a fair minded person would be concerned that a board member in or about the time of rendering his decision was engaged in discussions concerning being retained by another entity (a union which is under federal jurisdiction and therefore never subject to the Ontario Labour Relations Board) after having been advised that his appointment was being terminated by the Ontario Government. The Government clearly contemplated that persons such as Stoykewych would continue with ongoing matters yet otherwise be involved in the work force. Putting the shoe on the other foot, would there be any concern if Stoykewych had had discussions leading to being retained by a third party manufacturing concern? Of course not.

As for the Board's conclusions that this was an appropriate case to direct to first contract arbitration, we are of the view that such was not patently unreasonable based on the material before us. It is clear that Stoykewych and the other majority board member Grasso were of the view that negotiations had broken down because of the failure of both parties who had rushed to an impasse and that the bargaining relationship had become pathological. It is clear that fault did not all rest on one side as the dissenting member Sloan stated that progress had been made in bargaining as to all issues except wages. When we have what happens in a case such as this, it is appropriate to break the "log jam".

The application is dismissed. It is therefore not necessary to deal with the applicant's contingent concern that this court stay the Ontario Labour Relations Board's hearing scheduled to start November 18, 1997 pending the release of this court's decision.

Costs as agreed by the applicant Dover and the respondent Union are fixed at \$3,000 payable by Dover to the union. The Ontario Labour Relations Board does not seek any costs.

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### **3731-94-U (Court File No. 127/97) Bharat Goel, Applicant v. Ontario Labour Relations Board and York University Staff Association, Respondents**

**Duty of Fair Representation - Judicial Review - Unfair Labour Practice - Board declining to inquire into duty of fair representation complaint in view of passage of time from critical events, applicant's delay in raising his concerns with the union and the Board, the likelihood of success of the complaint and the utility of any remedy that might flow - Application for judicial review dismissed by Divisional Court**

Board decision dated July 7, 1995 not reported.

*Ontario Court (Divisional Court), O'Leary, B. Wright and Bell JJ., November 21, 1997.*

**O'Leary (Endorsement):** The Ontario Labour Relations Board concluded that it was not up to the union to pursue the employee's right to disability benefits, because the insurance benefits were not part of the collective agreement, and so there was no point in directing the union to deal with a matter it cannot pursue, for this reason the Board chose not to inquire into the complaint. We can see no error in that decision.



The application for judicial review is therefore dismissed no order as to costs.

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**1237-96-OH (Court File No. 204/97) Shelly Stiles, Applicant v. Horizon Plastics Company Limited, United Food and Commercial Workers Union and Ontario Labour Relations Board, Respondents**

**Discharge - Judicial Review - Health and Safety - Reconsideration - Applicant asserting that she was twice injured at work, that the injuries were reported to her employer, and that on one occasion she sought, and obtained, an assignment of lighter duties to accommodate her injury - Applicant subsequently released from employment during probation and alleging unlawful reprisal contrary to Occupational Health and Safety Act - Board dismissing application for failure to make out prima facie case - Applicant's reconsideration request denied - Application for judicial review dismissed by Divisional Court**

Board decisions not reported,

*Ontario Court of Justice (Divisional Court), Steele, Keenan and Caswell JJ., December 10, 1997.*

**Steele J. (endorsement):** This application is dismissed.

In our opinion the Board had jurisdiction to determine whether or not an application to it was properly before it. It had a discretion and its decision was not patently unreasonable.

Given the context of this case the Board made no error in finding that the complaint of this injury was not equivalent to a complaint of a hazard.

It was argued that there could be a conflict between a decision of an adjudicator on reviewing an inspector's order under the Act and a decision by the Board. No order is in existence in the present case and the issue of conflict is left to be considered in a proper case.

Costs to the respondent Horizon Plastics fixed at \$2,000.00. The Board did not ask for costs.

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**0164-95-R; 0186-95-R; 0187-95-R; 0251-95-R (Court File No. 244/97) Power Workers' Union, CUPE Local 1000, Applicant v. Ontario Hydro, G.T. Surdykowski, OLRB, IBEW, Local 1788, IBEW Electrical Power Systems Construction Council of Ontario, IBEW Local 105, The International Brotherhood of Electrical Workers, Local 353, The IBEW Construction Council of Ontario, The International Brotherhood of Electrical Workers, Local 1687, Electrical Power Systems Construction Association and Electrical Contractors Association of Ontario, Respondents**

**Certification - Construction Industry - Judicial Review - Reconsideration - Trade Union - Power Workers' Union (PWU) seeking to displace International Brotherhood of Electrical Workers (IBEW) in several bargaining units - Board concluding that PWU not a construction "trade union" within meaning of section 126 of the Act and therefore not entitled to bring its certification applications - Applications for certification and request for reconsideration dismissed - PWU applying for judicial review - Motions Court judging striking out portion of affidavit and factum filed by PWU**

Board decision reported at [1997] OLRB Rep. Jan./Feb. 82.

*Ontario Court (General Division) Divisional Court, Boland J., November 25, 1997.*

**Boland J. (Endorsement):** This is a motion by Ontario Hydro and Electrical Power Systems Construction Association to strike out portions of material filed by Power Workers' Union, CUPE, Local 1000 on an Application for Judicial Review to be heard by the Divisional Court in January, 1998.

The Application for Judicial Review attacks a decision of the Ontario Labour Relations Board dated February 27, 1997, ruling that Power Workers Union was not a trade union within the meaning of S.126 of the *Labour Relations Act*.

The decision is challenged on the ground that the Board erred in a manner going to its jurisdiction and that the decision itself was patently unreasonable.

The Application Record contains an affidavit sworn by Christopher Dassios and it is specific paragraphs in that affidavit and attached exhibits which Ontario Hydro et al contend are not proper on an Application for Judicial Review.

Counsel are agreed on the facts and the issue of law to be determined on the Judicial Review.

Having reviewed the material filed, I am satisfied the issues before the Divisional Court involve an interpretation of the *Labour Relations Act* and the application of these provisions. Lack of evidence, denial of natural justice, bias or fraud are not at issue.

The material that can properly be placed before the Divisional Court on a Judicial Review depends upon the nature of the issues. As a Judicial Review is not an appeal, the material must be limited and must be relevant.

In my opinion, paragraphs 8, 17, 19 and 20 of the affidavit of Christopher Dassios and exhibits 7, 8, 9, 12, 14, 15, and 16 attached to that affidavit, are not relevant to the issues raised on Judicial Review. As well paragraphs 8, 9 and 11 of the applicant's factum are not relevant.

Accordingly, an order shall issue deleting these paragraphs of the applicant's factum, the affidavit Christopher Dassios and these specific exhibits attached.

I am satisfied the submissions raised by the Power Workers' Union before the Board are irrelevant material on Judicial Review. As well, I do not find any merit in the argument of delay raised by Power Workers' Union.

A number of the other defendants filed factums supporting the motion and made submissions. Costs of the motion shall be fixed in the sum of \$2,000.00 and shall be payable forthwith. \$1,000.00 shall be paid to Ontario Hydro and Electrical Power Systems Construction Association, \$300.00 shall be paid to Electrical Contractors of Ontario and the balance of \$700.00 shall be paid to the participating defendants represented by Mr. Fishbein.















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# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING OCTOBER 1997

## APPLICATIONS FOR CERTIFICATION

### Bargaining Agents Certified Without Vote

**0455-95-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Novacor Construction Ltd. (Respondent)

Unit: "all employees of Novacor Construction Ltd. engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors, in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all employees of Novacor Construction Ltd. engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in all other sectors of the construction industry, excluding the industrial, commercial and institutional sector, in Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the geographic Townships of Percy and Cramahe and all lands east thereof in the County of Northumberland, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

**0601-95-R:** Labourers' International Union of North America, Local 506 (Applicant) v. Durr Industries Inc. (Respondent)

Unit: "all construction labourers in the employ of Durr Industries Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save all construction labourers in the employ of Durr Industries Inc. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman all construction labourers in the employ of Durr Industries Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (0 employees in unit)

### Bargaining Agents Certified Subsequent to Vote

**2158-95-R:** Independent Paperworkers of Canada (Applicant) v. Kimberly-Clark Inc. (Respondent) v. IWA-Canada (Intervener)

Unit: "all hourly-rated employees of Kimberly-Clark Inc. on all matters pertaining to rates of pay, hours of work, or other working conditions, provided that all employees while within the following classifications shall not be subject to the provisions of the agreement: Superintendents and Assistant Superintendents, Foremen, Office Staff, Stores Department, Engineering Department, Watchmen" (133 employees in unit)

Number of names of persons on revised voters' list	133
Number of persons who cast ballots	85
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	85
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	68
Number of ballots marked in favour of intervener	16

**0099-97-R:** The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 46 (Applicant) v. The Board of Education for the City of North York (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local 3219 (Intervener)

Unit: “all plumbers and plumbers’ apprentices in the employ of The Board of Education for the City of North York in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all plumbers and plumbers’ apprentices in the employ of The Board of Education for the City of North York in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquensing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman.”

Number of names of persons on revised voters’ list	16
Number of persons who cast ballots	16
Number of ballots marked in favour of applicant	15
Number of ballots segregated and not counted	1

**0546-97-R:** International Brotherhood of Painters and Allied Trades, Local Union 1819 (Glaziers) (Applicant) v. 489584 Ont. Limited F. G. Aluminum and Glass Inc. (Respondent)

Unit: “all glaziers and glaziers’ apprentices in the employ of 489584 Ont. Limited F. G. Aluminum and Glass Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all glaziers and glaziers’ apprentices in the employ of 489584 Ont. Limited F. G. Aluminum and Glass Inc. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquensing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (5 employees in unit)

Number of names of persons on revised voters’ list	13
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	5
Number of segregated ballots cast by persons whose names appear on voter’s list	5
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	5

**1177-97-R:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Agincourt Roofing Limited (Respondent)

Unit: “all carpenters and carpenters’ apprentices in the employ of Agincourt Roofing Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters’ apprentices in the employ of Agincourt Roofing Limited in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquensing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (2 employees in unit)

**1456-97-R:** Service Employees International Union, Local 204, Affiliated with the S.E.I.U. A.F. of L., C.I.O., C.L.C. (Applicant) v. Etobicoke General Hospital (Respondent)

Unit: “all office and clerical employees of Etobicoke General Hospital in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, Executive Secretary to President and C.E.O., Statistician/Secretary to Vice-President Finance, Administrative Secretary to Vice-President Patient Services, Administrative Secretary to Vice-President Diagnostic and Support Services, Assistant to Director of

Human Resources, Assistant to Medical Advisory Committee, Computer Programmers Volunteer Services Clerk, persons regularly employed for more than 24 hours per week, persons for whom any trade union held bargaining right as of August 29, 1997" (55 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	58
Number of persons who cast ballots	28
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	27
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	10
Number of ballots segregated and not counted	1

**1545-97-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. The Board of Education for the City of North York (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of The Board of Education for the City of North York in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman all carpenters and carpenters' apprentices in the employ of The Board of Education for the City of North York in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (47 employees in unit)

Number of names of persons on revised voters' list	39
Number of persons who cast ballots	28
Number of ballots marked in favour of applicant	27
Number of ballots marked against applicant	1

**1735-97-R:** Labourers' International Union of North America, Local 597 (Applicant) v. Dufferin Construction Company (Respondent)

Unit: "all construction labourers in the employ of Dufferin Construction Company in all sectors of the construction industry in the Towns of Cobourg and Port Hope, and the geographic Townships of Hope, Hamilton, and Alnwick in the County of Northumberland, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	5
Number of ballots segregated and not counted	1

**2087-97-R:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Jacques Laperle, c.o.b. as Laperle Enterprises (Respondent)

Unit: "all journeymen and apprentice electricians and journeymen and apprentice linemen in the employ of Jacques Laperle, c.o.b. as Laperle Enterprises in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice electricians and journeymen and apprentice linemen in the employ of Jacques Laperle, c.o.b. as Laperle Enterprises in all sectors of the construction industry in the Regional Municipality of Ottawa-Carleton, and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and



persons above the rank of non-working foreman" (3 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots, excluding segregated ballots, cast by persons whose names appear on voters' list	2
Number of ballots marked in favour of applicant	2

**2101-97-R:** Labourers' International Union of North America Practical Nurses Federation of Ontario, Local 1100 (Applicant) v. Bloorview MacMillan Centre (Respondent)

Unit: "all employees of Bloorview MacMillan Centre employed as registered and graduate practical nurses in the Municipality of Metropolitan Toronto, save and except Nursing Director and persons above the rank of Nursing Director" (42 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	45
Number of persons who cast ballots	32
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	24
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	1

**2143-97-R:** United Food and Commercial Workers Union, Local 1977 (Applicant) v. The Printing Group (Respondent)

Unit: "all employees of The Printing Group in the Province of Ontario, save and except the General Manager and those above the rank of General Manager" (3 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0

**2166-97-R:** Communications, Energy & Paperworkers Union of Canada (Applicant) v. Rapid Transformers Ltd. (Respondent)

Unit: "all production employees of Rapid Transformers Ltd., at its Rapid Transformer location at 525 Boundry Rd. in the City of Cornwall, Ontario, save and except supervisors, those above the rank of supervisor, summer students and those not regularly employed for more than 24 hours per week" (27 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	26
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	1

**2188-97-R:** Service Employees Union Local 268 affiliated with the S.E.I.U., A.F. of L., C.I.O., and C.L.C. (Applicant) v. Olsten Services Limited carrying on business as Olsten Health Services (Respondent)

Unit: "all employees of Olsten Services Limited carrying on business as Olsten Health Services in the City of Thunder Bay, save and except supervisors, persons above the rank of supervisor, office and clerical staff and on-call co-ordinator" (27 employees in unit)

Number of names of persons on revised voters' list	28
Number of persons who cast ballots	32
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	11

**2227-97-R:** United Automobile, Aerospace & Agricultural Implement Workers of America, UAW (Applicant) v. Victim Services of Windsor & Essex County (Respondent)

Unit: "all employees of the Responding Party, Victim Services of Windsor & Essex County, in the city of Windsor, save and except Assistant Directors and persons above the rank of Assistant Directors" (3 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	3

**2251-97-R:** Canadian Health Care Workers (C.H.C.W) (Applicant) v. Comcare (Canada) Limited (Respondent)

Unit: "all employees of Comcare (Canada) Limited in the County of Wellington and the County of Dufferin, save and except office and clerical staff, dispatchers, co-ordinators, persons above the rank of co-ordinator and professional nursing staff" (71 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	89
Number of persons who cast ballots	62
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	54
Number of segregated ballots cast by persons whose names appear on voter's list	8
Number of ballots marked in favour of applicant	32
Number of ballots marked against applicant	21
Number of ballots segregated and not counted	8

**2268-97-R:** Local Union 47 Sheet Metal Workers' International Association (Applicant) v. 1041367 Ontario Ltd. c.o.b. as Action Roofing (Respondent)

Unit: "all journeymen sheet metal workers and registered sheet metal apprentices in the employ of 1041367 Ontario Ltd. c.o.b. as Action Roofing in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen sheet metal workers and registered sheet metal apprentices in the employ of 1041367 Ontario Ltd. c.o.b. as Action Roofing in all sectors of the construction industry in the Regional Municipality of Ottawa-Carleton, and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in unit)

Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	3

**2287-97-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Loeb Inc. c.o.b. as Loeb Tecumseh (Respondent)

Unit: "all employees of Loeb Inc. c.o.b. as Loeb Tecumseh employed at 11729 Tecumseh Rd. E. in the City of Windsor, save and except Department Managers and persons above the rank of Department Managers, office staff and management trainee" (62 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	63
Number of persons who cast ballots	38
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	37
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	21
Number of ballots marked against applicant	15

**2292-97-R:** International Union of Operating Engineers Local 772 (Applicant) v. Hamilton Health Sciences Corporation (Respondent) v. Ontario Nurses' Association (Intervener)

Unit: "all employees of the Hamilton Health Sciences Corporation - McMaster site, save and except professional staff, medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, social workers, social work assistants, persons engaging in research work, paramedical and technical personnel, supervisors, persons above the rank of supervisor, foreman, persons above the rank of foreman, chief engineer, office and clerical staff, security guards, students employed during the school vacation period and persons for whom a trade union held bargaining rights on the date of application" (362 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	395
Number of persons who cast ballots	251
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	194
Number of segregated ballots cast by persons whose names appear on voter's list	21
Number of segregated ballots cast by persons whose names do not appear on voters' list	36
Number of ballots marked in favour of applicant	208
Number of ballots marked against applicant	16
Number of ballots segregated and not counted	19

**2295-97-R:** International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Applicant) v. ST Delta Canada Inc. (Respondent)

Unit: "all boilermakers and boilermakers' apprentices in the employ of ST Delta Canada Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all boilermakers and boilermakers' apprentices in the employ of ST Delta Canada Inc. in all sectors of the construction industry in the County of Lambton, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (94 employees in unit)

Number of names of persons on revised voters' list	89
Number of persons who cast ballots	34
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	34
Number of ballots marked in favour of applicant	34
Number of ballots marked against applicant	0

**2302-97-R:** International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Biasutti Drywall Services Ltd. (Respondent)

Unit: "all painters and painters' apprentices in the employ of Biasutti Drywall Services Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of Biasutti Drywall Services Ltd. in all sectors of the construction industry in



the County of Wellington; the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (6 employees in unit) (*Clarity Note*)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of applicant	4

**2340-97-R:** United Food & Commercial Workers, Local 206, Chartered by The United Food & Commercial Workers International Union C.L.C., A.F.L.-C.I.O. (Applicant) v. Royal Canadian Legion, Branch 43 (Respondent)

Unit: “all employees of the Royal Canadian Legion Branch at 471 Simcoe Street South in the City of Oshawa” (9 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	1

**2373-97-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Meadowbrook Homes Inc. (Respondent)

Unit: “all construction labourers in the employ of Meadowbrook Homes Inc. in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (2 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	2

**2375-97-R:** Canadian Union of Public Employees (Applicant) v. Rehabilitation Institute of Toronto (Respondent)

Unit: “all employees of the Rehabilitation Institute of Toronto in the Municipality of Metropolitan Toronto regularly employed for not more than 24 hours per week and students employed during the school vacation periods, save and except professional medical staff, graduate and undergraduate nursing staff, graduate and undergraduate pharmacists, graduate and undergraduate dietitians, technical personnel, supervisors and forepersons, persons above the rank of supervisor or foreperson chief engineers, office and clerical staff and employees in bargaining units for whom any trade union held bargaining rights as of September 1997” (32 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of ballots marked in favour of applicant	14

**2415-97-R:** Service Employees International Union, Local 204, Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Empire Maintenance Industries Inc. (Respondent)

Unit: "all employees of Empire Maintenance Industries Inc. at 20 and 40 Dundas Street West and 595 Bay Street (known as The Atrium on Bay) in the City of Metropolitan Toronto, save and except forepersons and persons above the rank of foreperson" (40 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	43
Number of persons who cast ballots	36
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	33
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of ballots marked in favour of applicant	28
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	3

**2416-97-R:** Ontario Public Service Employees Union (Applicant) v. Manitoulin Haven House Inc. (Respondent)

Unit: "all employees of Manitoulin Haven House Inc., in the District of Manitoulin, save and except Supervisors, persons above the rank of Supervisor, Home Child Care Providers, Bookkeeper and Administrative Assistant" (17 employees in unit)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	1

**2427-97-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Unicco Facility Services Canada Company (Respondent)

Unit: "all employees of Unicco Facility Services Canada Company employed at The Toronto Star, One Century Place, Vaughan, save and except site supervisor and persons above the rank of site supervisor" (14 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	4

**2439-97-R:** Canadian Health Care Workers (Applicant) v. My Friend's House, Collingwood Crisis Centre (Respondent)

Unit: "all employees of My Friend's House, Collingwood Crisis Centre, in the Town of Collingwood, save and except Executive Director, persons above the rank of Executive Director and Office Co-ordinator" (10 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	3

**2441-97-R: Ontario Public Service Employees Union (Applicant) v. Interim Place (Respondent)**

Unit: "all employees of Interim Place in the Regional Municipality of Peel, save and except Administrative Assistant, Coordinator of Volunteers, Program Supervisors and persons above the rank of Program Supervisors" (53 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	53
Number of persons who cast ballots	41
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	21
Number of segregated ballots cast by persons whose names appear on voter's list	20
Number of ballots marked in favour of applicant	34
Number of ballots marked against applicant	7

**2444-97-R: Canadian Union of Public Employees (Applicant) v. Township of Rawdon (Respondent)**

Unit: "all employees of the Township of Rawdon, save and except the Deputy Clerk-Treasurer and persons above the rank of Deputy Clerk-Treasurer, and Road Superintendent" (6 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	2

**2449-97-R: Ontario Secondary School Teachers' Federation (Applicant) v. Atikokan Board of Education (Respondent)**

Unit: "all Teaching Assistants and Intervention Counsellors employed by the Atikokan Board of Education" (11 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	0

**2462-97-R: Teamsters Local Union No. 419 (Applicant) v. The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local 787 (Respondent)**

Unit: "all office employees of The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local 787 in the Regional Municipality of Peel" (5 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0

**2478-97-R: Laundry and Linen Drivers and Industrial Workers Union, Local 847, affiliated with the International Brotherhood of Teamsters, AFL-CIO (Applicant) v. Chartwell Canada Corp. c.o.b. as Travelodge Scarborough (Respondent)**

Unit: "all employees of Chartwell Canada Corp. c.o.b. as Travelodge Scarborough in the City of Scarborough, in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor,



office, clerical and sales staff, students employed during the school vacation period, and persons employed in the position of night auditor" (30 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	26
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	26
Number of ballots marked in favour of applicant	19
Number of ballots marked against applicant	7

**2479-97-R:** Service Employees Union Local 268 affiliated with the S.E.I.U., A.F. of L., C.I.O. and C.L.C. (Applicant) v. Setterland Group Homes Inc. (Respondent)

Unit: "all employees of Setterland Group Homes Inc. in the Tri-Municipal Area comprised of the Towns of Kenora, Jaffray-Malack, and Keewatin, save and except supervisors and persons above the rank of supervisor" (9 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of ballots marked in favour of applicant	10
Number of ballots segregated and not counted	4

**2492-97-R:** United Food and Commercial Workers International Union (Applicant) v. Dough Delight Ltd. carrying on business as Toronto Bagel - Canada Bread (Respondent)

Unit: "all employees of Dough Delight Ltd. carrying on business as Toronto Bagel - Canada Bread at 680 Steeprock Drive, Downsview, Ontario, save and except supervisors, persons above the rank of supervisor, office and clerical employees and route drivers" (75 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	90
Number of persons who cast ballots	79
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	79
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	67
Number of ballots marked against applicant	11

**2578-97-R:** United Brotherhood of Retail, Food, Industrial & Service Trades International Union (Applicant) v. 935772 Ontario Ltd. c.o.b. as "Royal Taxi" (Respondent)

Unit: "all dependent contractors and/or employees of 935772 Ontario Ltd. c.o.b. as "Royal Taxi" operating under a Royal Taxi roof sign in Metropolitan Toronto, excluding supervisors and those above the rank of supervisor, dispatchers, call takers, maintenance staff, office and clerical staff, multi-plate/multi-car owners or lessees and inspectors" (920 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	1213
Number of persons who cast ballots	576
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	460
Number of segregated ballots cast by persons whose names appear on voter's list	48
Number of segregated ballots cast by persons whose names do not appear on voters' list	68
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	267
Number of ballots marked against applicant	193
Number of ballots segregated and not counted	116

## Applications for Certification Dismissed Without Vote

**4029-95-R:** International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of The United States and Canada, Local 58, Toronto (Applicant) v. Crocodile Labour Services Inc. (Respondent)

## Applications for Certification Dismissed Subsequent to Vote

**0724-97-R:** International Brotherhood of Electrical Workers, Construction Council of Ontario (Applicant) v. Carlo's Electric Limited (Respondent) v. Carlo's Electric Employees Association (Intervener)

Unit: "all electricians and electricians' apprentices in the employ of Carlo's Electric Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all electricians and electricians' apprentices in the employ of Carlo's Electric Limited in all other sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, and in the County of Simcoe and the District Municipality of Muskoka, save and except non-working foremen and persons above the rank of non-working foreman" (12 employees in unit)

**0928-97-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Canadian Building Restoration Limited (Respondent) v. Operative Plasterers', Cement Masons' and Restoration Steeplejacks' of the United States and Canada, Local 598 (Intervener)

Unit: "all construction labourers in the employ of Canadian Building Restoration Limited in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (15 employees in unit)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	5

**1970-97-R:** Canadian Union of Public Employees (Applicant) v. York University (Respondent)

Unit: "all Assistant Supervisors and Supervisors in the Department of Safety, Security and Parking Services - Student Section, at York University save and except Administrative Supervisors and those above the rank of Administrative Supervisors" (14 employees in unit)

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	11
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	9

**1978-97-R:** International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Pell Insulation Ltd. (Respondent)

Unit: "all plumbers and plumbers' apprentices in the employ of Pell Insulation Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all painters and painters' apprentices in the employ of Pell Insulation Ltd. in all other sectors of the construction industry in the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly

annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, and the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non- working foremen and persons above the rank of non-working foreman.” (7 employees in unit)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	10
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	8

**1995-97-R:** International Brotherhood of Electrical Workers, Local Union 1739 (Applicant) v. Wayne Bishop Electric Ltd. c.o.b as Service Electric (Respondent)

Unit: “all electricians and electricians’ apprentices in the employ of Wayne Bishop Electric Ltd. c.o.b. as Service Electric, in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all electricians and electricians’ apprentices in the employ of Wayne Bishop Electric Ltd. c.o.b. as Service Electric, in all other sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, save and except non-working foremen and persons above the rank of non-working foreman.” (3 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	4

**2123-97-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Tony Carson Peninsula Ford (Respondent)

Unit: “all employees in the Town Port Elgin, Ontario, at Peninsula Ford save and except forepersons, persons above the rank of foreperson, office and clerical staff and persons regularly employed for not more than twenty-four hours per week” (30 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	1

**2124-97-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Tony Carson Peninsula Ford (Respondent)

Unit: “all employees in the Township of Derby, Ontario at Peninsula Ford, save and except fore persons, person above the rank of fore person, office and clerical staff and persons regularly employed for not more than twenty-four hours per week” (3 employees in unit)

Number of names of persons on revised voters' list	33
Number of persons who cast ballots	30
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	28
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	18
Number of ballots segregated and not counted	2



**2141-97-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Hallcon Cleaning Ltd. (Respondent)

Unit: "all employees of Hallcon Cleaning Ltd. engaged in cleaning and maintenance at the Go Willowbrook Facility, 125 Judson Street, Toronto, Ontario, save and except foremen, persons above the rank of foremen, supervisors, persons above the rank of supervisor, office staff, salaried personnel, dispatchers, and sales representatives" (37 employees in unit)

Number of names of persons on revised voters' list	37
Number of persons who cast ballots	32
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	32
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	16

**2184-97-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Palmer Paving & Construction Ltd. (Respondent)

Unit: "all employees of Palmer Paving & Construction Ltd. engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in all sectors of the construction industry in that portion of the District of Algoma south of the 49th parallel of latitude, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (17 employees in unit)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	2

**2267-97-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Land Pride Group Inc. (Respondent)

Unit: "all employees of Land Pride Group Inc. in Metropolitan Toronto, save and except supervisors and those above the rank of supervisors, save and except sales, office and clerical staff" (7 employees in unit)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	3

**2278-97-R:** United Steelworkers of America (Applicant) v. Carecor Health Services Limited (Respondent)

Unit: "all employees of Carecor Health Services Limited in the City of Mississauga, save and except Facility Supervisors and persons above the rank of Facility Supervisor" (8 employees in unit)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	6

**2293-97-R:** United Steelworkers of America (Applicant) v. Baron Metal Industries Inc. (Respondent)

Unit: "all employees of Baron Metal Industries Inc. in the Regional Municipality of York, save and except forepersons, persons above the rank of foreperson, office, clerical and sales staff" (58 employees in unit)

Number of names of persons on revised voters' list	58
Number of persons who cast ballots	58
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	58
Number of ballots marked in favour of applicant	28
Number of ballots marked against applicant	30

**2294-97-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Repla Limited (Respondent)

Unit: "all employees of Repla Limited, in the Town of Oakville, save and except supervisors, persons above the rank of supervisor, office and clerical staff, sales and engineering, part time employees, and students employed during the school vacation" (48 employees in unit)

Number of names of persons on revised voters' list	47
Number of persons who cast ballots	48
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	47
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	21
Number of ballots marked against applicant	26
Number of ballots segregated and not counted	1

**2321-97-R:** Teamsters Local Union No. 230, Ready-Mix, Building Supply, Hydro & Construction Drivers, Affiliated with the International Brotherhood of Teamsters (Applicant) v. U.S.E. Hickson Products Ltd. (Respondent)

Unit: "all employees of U.S.E. Hickson Products Ltd. in the City of Scarborough in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (42 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	51
Number of persons who cast ballots	49
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	49
Number of ballots marked in favour of applicant	19
Number of ballots marked against applicant	30

**2387-97-R:** Independent Paperworkers of Canada (Applicant) v. Bird Packaging Limited (Respondent)

Unit: "all full-time, permanent employees of Bird Packaging Limited located in the City of Guelph, save and except supervisors, persons above the rank of supervisor, office and sales staff, part-time employees and temporary employees hired through an outside agency" (42 employees in unit)

Number of names of persons on revised voters' list	50
Number of persons who cast ballots	50
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	41
Number of segregated ballots cast by persons whose names appear on voter's list	9
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	26

**2392-97-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. B.H.M.C. Canada Inc. c.o.b. as The Holiday Inn Peterborough Waterfront (Respondent)

Unit: "all employees of B.H.M.C. Canada Inc. c.o.b. as The Holiday Inn Peterborough Waterfront in the City of Peterborough, save and except supervisors, those above the rank of supervisor, office and clerical staff, sales staff, persons employed in a cooperative work or futures program and casual employees" (89 employees in unit)

Number of names of persons on revised voters' list	89
Number of persons who cast ballots	82
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	81
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	34
Number of ballots marked against applicant	47
Number of ballots segregated and not counted	1

**2483-97-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Trademark Safety Inc. (Respondent)

Unit: "all construction labourers in the employ of Trademark Safety Inc. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; and the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman." (24 employees in unit)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	14
Number of ballots segregated and not counted	1

**2495-97-R:** Local 400 F.W.D., International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO (Applicant) v. Boehmer Box Corporation, A Division of A. & C. Boehmer Limited (Respondent)

Unit: "all employees of Boehmer Box Corporation, a Division of A. & C. Boehmer Limited, in the Regional Municipality of Waterloo, save and except supervisors and persons above the rank of supervisor, office staff, sales staff, accounting staff and students employed during the school vacation period" (120 employees in unit)

Number of names of persons on revised voters' list	154
Number of persons who cast ballots	151
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	134
Number of segregated ballots cast by persons whose names appear on voter's list	17
Number of ballots marked in favour of applicant	23
Number of ballots marked against applicant	110
Number of ballots segregated and not counted	17

## Applications for Certification Withdrawn

**1593-94-R:** International Brotherhood of Electrical Workers (Applicant) v. E. B. Eddy Forest Products Limited Espanola Division (Respondent) v. Group of Employees (Objectors)

**1135-97-R:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Brennan Paving & Construction Ltd. (Respondent)



**1965-970-R:** Sheet Metal Workers' International Association (Applicant) v. Kolostat Inc. c.o.b. as Kolostat Mechanical Contractor (Respondent) (*Terminated*)

**2199-97-R:** International Union of Bricklayers and Allied Craftworkers, Local 10 (Applicant) v. Cupido Construction (1989) Ltd. (Respondent)

**2394-97-R:** Laundry & Linen Drivers and Industrial Workers, Teamsters Local 847 (Applicant) v. Travelodge (Respondent)

**2502-97-R:** The Professional Institute of the Public Service of Canada (PIPSC) (Applicant) v. Cancer Care Ontario (Respondent) v. Canadian Union of Public Employees (Intervener)

**2602-97-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Skyservice F.B.O. (1996) Inc. (Respondent)

**2797-97-R:** Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. Best Western Primrose Hotel (Respondent)

## FIRST AGREEMENT - DIRECTION

**2280-97-FC:** Ontario Nurses' Association (Applicant) v. Comcare (Canada) Limited (Respondent) (*Dismissed*)

## APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

**4145-94-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Metropolitan Toronto Condominium Corporation #971, Metropolitan Toronto Condominium Corporation #991, Metropolitan Toronto Condominium Corporation #996, Metropolitan Toronto Condominium Corporation #1074, Goldlist Development Corporation/Goldlist Property Management (Respondents) (*Withdrawn*)

**1945-96-R:** Sheet Metal Workers' International Association, Local 562 (Applicant) v. Walden Roofing and Sheet Metal Company Ltd. and Watertight Roofing Services Limited (Respondents) (*Granted*)

**2378-96-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Cornwall Gravel Company Limited and R.J. Bender Construction Limited (Respondents) (*Withdrawn*)

**0218-97-R:** International Brotherhood of Painters & Allied Trades, Local 1795 - Glaziers (Applicant) v. All Universal Glass & Aluminum, Universal Glass & Aluminum, All Right Glass and All Universal Glass Corp. (Respondents) (*Granted*)

**1221-97-R:** International Brotherhood of Painters and Allied Trades, District Council 46 (Applicant) v. Lesniewski Painting Ltd. and Lesniewski Painting (Respondent) (*Granted*)

**1430-97-R:** The United Food and Commercial Workers' International Union, Local 175 & 633 (Applicant) v. Best Western Continental Inn and Seasons Restaurant (Respondents) (*Granted*)

**1476-97-R:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Filomena Luis and/or John Luis operating as Oshawa Steel Reenforce, Sam Steel, Rockton Contractors Inc. (Respondents) (*Withdrawn*)

**2048-97-R:** International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Applicant) v. PCL Constructors Canada Inc., Bank of Montreal (Respondents) (*Withdrawn*)

## SALE OF A BUSINESS

**0330-96-R:** Sheet Metal Workers' International Association, Local 473 (Applicant) v. Sutherland-Schultz Limited, W & S Services Limited, Wilson & Somerville Limited (Respondents) (*Endorsed Settlement*)

**0978-96-R:** The Governing Council of the University of Toronto (Applicant) v. The Professional Staff Association of the Ontario Institute for Studies in Education (Respondent) (*Granted*)

**1945-96-R:** Sheet Metal Workers' International Association, Local 562 (Applicant) v. Walden Roofing and Sheet Metal Company Ltd. and Watertight Roofing Services Limited (Respondents) (*Granted*)

**2378-96-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Cornwall Gravel Company Limited and R.J. Bender Construction Limited (Respondents) (*Withdrawn*)

**4239-96-R:** United Steelworkers of America (Applicant) v. Price Manufacturing Inc. (Respondent) (*Withdrawn*)

**0218-97-R:** International Brotherhood of Painters & Allied Trades, Local 1795 - Glaziers (Applicant) v. All Universal Glass & Aluminum, Universal Glass & Aluminum, All Right Glass and All Universal Glass Corp. (Respondents) (*Granted*)

**0479-97-R:** Teamsters Local Union 91 (Applicant) v. Corporation of the Township of Clarence and Corporation of the Town of Rockland (Respondents) v. International Brotherhood of Electrical Workers, Local 2228 (Intervener) (*Granted*)

**0821-97-R:** Canadian Union of Public Employees (Applicant) v. Lanark, Leeds and Grenville Student Transportation Authority (Respondent) (*Withdrawn*)

**1221-97-R:** International Brotherhood of Painters and Allied Trades, District Council 46 (Applicant) v. Lesniewski Painting Ltd. and Lesniewski Painting (Respondent) (*Granted*)

**1430-97-R:** The United Food and Commercial Workers' International Union, Local 175 & 633 (Applicant) v. Best Western Continental Inn and Seasons Restaurant (Respondents) (*Granted*)

**1476-97-R:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Filomena Luis and/or John Luis operating as Oshawa Steel Reenforce, Sam Steel, Rockton Contractors Inc. (Respondents) (*Withdrawn*)

**2006-97-R:** Schneider Employees' Association (Applicant) v. J. M. Schneider Inc. and ERB Transport (Respondents) (*Withdrawn*)

**2048-97-R:** International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Applicant) v. PCL Constructors Canada Inc., Bank of Montreal (Respondents) (*Withdrawn*)

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**3834-95-R:** The Hamilton Spectator, A Division of Southam Inc. (Applicant) v. Communications, Energy and Paperworkers Union, Local 87-M, Ontario Newspaper Guild (Respondent) (*Withdrawn*)

**3926-95-R; 3927-95-R; 3928-95-R; 3929-95-R:** Bradson Mercantile Inc. (Applicant) v. United Steelworkers of America (Respondent) (*Withdrawn*)

**0797-97-R:** Wendy Quarrington, Karen Flood, Rosemarie Dagenais and Anna Lou King, on behalf of themselves and on behalf of a Group of Employees of 1153413 Ontario Limited c.o.b. as Hendriks' Your Independent Grocer (Applicants) v. United Food and Commercial Workers International Union, Local 175 & 633 (Respondent) v. 1153413 Ontario Limited c.o.b. as Hendriks' Your Independent Grocer (Intervener)

Unit: "The Employer recognizes the Union as the sole bargaining agent for all employees of 1153413 Ontario Limited c.o.b. as Hendriks' Your Independent Grocer in the Town of Perth, save and except Store Manager, persons above the rank of Store Manager, Bookkeeper, Meat Manager, Deli Manager, Produce Manager and Head Cashier" (104 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	96
Number of persons who cast ballots	65
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	65
Number of ballots marked in favour of respondent	45
Number of ballots marked against respondent	20

**1766-97-R:** Chris Norton, Henry Palma, Neil Pohkoy (Applicant) v. International Union of Operating Engineers, Local 796 (Respondent) v. Park Plaza Hotel (Intervener)

Unit: "The employer agrees with the union that during the life of this agreement it will only employ and keep employed engineers and helpers who are members in good standing of the union" (0 employees in unit) (*Granted*)

**2102-97-R:** William Lohnes (Applicant) v. Canadian Union of Operating Engineers and General Workers (Respondent)

Unit: "all regular service centre employees of York Spring and Radiator Service Ltd. employed in the Town of Aurora, save and except supervisors, persons above the rank of supervisor, office and sales staff, customer service counter personnel and 2 students employed during the period April 15 through September 15" (8 employees in unit) (*Withdrawn*)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of ballots marked in favour of respondent	3
Number of ballots marked against respondent	4

**2257-97-R:** Pierre Roy (Applicant) v. IWA-Canada, Local 2693 Industrial Wood & Allied Workers of Canada (Respondent) v. Goulard Lumber (1971) Limited (Intervener)

Unit: "all employees of Goulard Lumber (1971) Limited at its saw mill, planning mill and mill yards in the Township of Springer, save and except foremen, persons above the rank of foreman, office, clerical and sales staff, persons employed for not more than 24 hours per week and students employed during the school vacation period" (36 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	37
Number of persons who cast ballots	37
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	37
Number of ballots marked in favour of respondent	17
Number of ballots marked against respondent	20

**2288-97-R:** Jeannot Larocque (Applicant) v. IWA-Canada Local 2693 (Respondent) v. Isidore Roy Limited (Intervener)

Unit: "all employees of Isidore Roy Limited at its sawmill, planning mill and millyards in the Township of Ratter, save and except foremen, persons above the rank of foreman, office, clerical and sales staff, watch staff and students employed during the school vacation period" (26 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	26
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	26



Number of spoiled ballots	1
Number of ballots marked in favour of respondent	9
Number of ballots marked against respondent	16

**2339-97-R:** Diane Hirschberger (Applicant) v. IBEW Local 636 (Respondent) v. Imagetel (Intervener)

Unit: "all employees at its Kitchener plants, save and except Supervisors, those above the rank of Supervisor, Chief Engineers, Security Staff, Sales, Office and Clerical which includes Printing and Office Services, Professional and Technical Salaried Staff, and persons regularly employed for not more than sixteen (16) hours per week" (7 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of ballots marked in favour of respondent	2
Number of ballots marked against respondent	5

**2353-97-R:** Linda Dafoe (Applicant) v. United Food and Commercial Workers International Union, Local 175 (Respondent) v. Bird Foods Inc. (Intervener)

Unit: "all employees of Bird Foods Inc. c.o.b. as Havelock I.G.A. in the Town of Havelock, save and except Assistant Store Manager, persons above the rank of Assistant Store Manager, Meat Manager and Grocery Manager" (30 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	27
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	27
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	17
Number of ballots marked against respondent	9

**2405-97-R:** Stewart Jones (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 195, CAW (Respondent) v. Kehl Tools Ltd. (Intervener)

Unit: "all employees of Kehl Tools Ltd. in the Town of LaSalle, save and except foremen, persons above the rank of foreman, office and sales staff" (7 employees in unit) (*Granted*)

**2423-97-R:** Stan Rzepczynski (Applicant) v. Service Employees Union Local 268 affiliated with the S.E.I.U., A.F. of L., C.I.O. and C.L.C. (Respondent) v. Roach's Taxi (1988) Ltd. (Intervener)

Unit: "all employees of Roach's Taxi (1988) Ltd. in the City of Thunder Bay, save and except supervisors, persons above the rank of supervisor, the bookkeeper, and persons for whom any trade union held bargaining rights as of November 30, 1994" (50 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	51
Number of persons who cast ballots	44
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	44
Number of ballots marked in favour of respondent	12
Number of ballots marked against respondent	32

**2456-97-R:** Ann Fisher (Applicant) v. Retail Wholesale Canada Canadian Service Sector Division of the United Steelworkers of America Local 448 (Respondent)

Unit: "all full-time and part-time employees of the Rendezvous Tavern, 920 Dundas Street, London, Ontario" (6 employees in unit) (*Granted*)

**2458-97-R:** O.P.E.I.U. Bartender Employees Only (Applicant) v. Office & Professional Employees International Union, Local 343 (Respondent) v. CAW, Local 397 (Intervener) (*Dismissed*)

**2615-97-R:** Garth Everitt, Derek Deacon, Connie Sterling (Applicant) v. U.A.W. Local 251 (Respondent) (*Dismissed*)

**2639-97-R:** Brad Royer, on his own behalf and on behalf of a group of employees of 608507 Ontario Inc. c.o.b. Capital Security and Investigations (Applicant) v. United Steelworkers of America (Respondent) v. Capital Security and Investigations (Intervener)

Unit: "all employees employed by the Employer in the Regional Municipality of Ottawa-Carleton save and except Patrol Officers, persons above the rank of Patrol Officer, dispatcher, office, clerical and sales staff" (60 employees in unit) (*Granted*)

**2649-97-R:** Bargaining Unit Located at Upper Valley Dairy Products, Pembroke, Ontario, (otherwise known as "Don Markus") (Applicant) v. Local 647 of the Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees (Respondent) v. Upper Valley Dairy Products (Intervener) (*Granted*)

**2680-97-R:** Dean Raymond Barre (Applicant) v. National Automobile, Aerospace, Transportation and Central Workers Union of Canada (CAW-Canada) and its Local 525 (Respondent) v. Roberts-Gordon Canada Inc. (Intervener) (*Granted*)

## **APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE (CONSTRUCTION INDUSTRY)**

**2514-97-U:** International Association of Bridge, Structural and Ornamental Ironworkers, Local 700 (Applicant) v. Millwrights, Local 1592, United Brotherhood of Carpenters and Joiners of America - Paul Fitzgerald, Canadian Auto Workers Union, Local 1520 - Ron Jones - Larry Haigh, Ford Motor Company of Canada Limited - B. Wagner - R.J. Weeks (Respondents) (*Withdrawn*)

## **COMPLAINTS OF UNFAIR LABOUR PRACTICE**

**3304-95-U:** United Steelworkers of America (Applicant) v. Birchmere Retirement Residence (Respondent) (*Withdrawn*)

**0724-96-U:** Professional Staff Association of O.I.S.E. (Applicant) v. The Ontario Institute for Studies in Ontario and University of Toronto, University of Toronto (Respondents) (*Withdrawn*)

**1056-96-U:** London and District Service Workers' Union, Local 220 S.E.I.U., A.F.L. of C.I.O. - C.L.C. (Applicant) v. Kitchener-Waterloo Hospital/Grand River Hospital Corporation (Respondent) (*Dismissed*)

**1656-96-U:** Bradson Mercantile Inc. (Applicant) v. United Steelworkers of America (Respondent) (*Withdrawn*)

**1976-96-U:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Provincial Industrial Roofing & Sheet Metal Co. Ltd. (Respondent) v. Sheet Metal Workers' International Association, Local 30 (Intervener) (*Withdrawn*)

**2073-96-U:** Jette Steward (Applicant) v. The National Union of Automobile, Aerospace and Agricultural Implementation Workers of Canada (CAW) Local 27 (Respondent) v. 3M Canada Inc. (Intervener) (*Dismissed*)

**2272-96-U:** Ontario Public Service Employees Union (Applicant) v. Cerminara Boys Residence Inc. (Respondent) (*Withdrawn*)

**2296-96-U:** Colleen Jennie Hand (Applicant) v. Canadian Union of Public Employees, Local 2067 and The Windsor Public Library Board (Respondents) (*Withdrawn*)

**2447-96-U:** Mr. Peter Osbourne (Applicant) v. The Westin Hotel and Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Respondents) (*Dismissed*)

**3144-96-U:** United Food & Commercial Workers International Union (Applicant) v. Aradco Management Limited (Respondent) (*Withdrawn*)

**3996-96-U:** Ontario Public School Teachers' Federation (Applicant) v. The Cochrane-Iroquois Falls, Black River-Matheson Board of Education (Respondent) (*Withdrawn*)

**4032-96-U:** Alda May Campbell (Applicant) v. Service Employees International Union, Local 204 (Respondent) (*Dismissed*)

**4165-96-U; 0803-97-U:** Hollis Joe (Applicant) v. Canadian Union of Public Employees, Local 1230 (Respondent) v. The Governing Council of the University of Toronto (Intervener); Hollis Joe et al (Applicant) v. Canadian Union of Public Employees, Local 1230 (Respondent) v. The Governing Council of the University of Toronto (Intervener) (*Dismissed*)

**4328-96-U:** United Food and Commercial Workers International Union (Applicant) v. Hercules Molded Products Inc. (Respondent) (*Withdrawn*)

**0002-97-U:** Paulo Abbruscato (Applicant) v. Retail, Wholesale Canada Local 414 and 20 Vic Management Inc. (Respondents) (*Withdrawn*)

**0020-97-U:** Tom Gibeault (Applicant) v. Canadian Telephone Employees' Association (Respondent) v. Tele-Direct (Publications) Inc. (Intervener) (*Dismissed*)

**0148-97-U:** United Food and Commercial Workers International Union, Local 175 & 633 (Applicant) v. 1137794 Ontario Inc. c.o.b. as Fort Erie Foodland (Respondent) (*Granted*)

**0242-97-U; 0896-97-U:** Abdul Kamara (Applicant) v. Amalgamated Transit Union Local 113 (Respondent) v. Toronto Transit Commission (Intervener); Abdul Karim Kamara (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervener) (*Dismissed*)

**0368-97-U:** Graphic Communications Union, Local 41M (Applicant) v. Standard Freeholder, a division of Southam Inc. (Respondent) (*Withdrawn*)

**0394-97-U:** Jasvir K. Singh (Applicant) v. United Steelworkers of America Local No. 8694 (Respondent) (*Withdrawn*)

**0422-97-U:** Jon Shepherd (Applicant) v. United Plant Guard Workers of America (Local 1962) (Respondent) v. Burns International Security Services Limited (Intervener) (*Dismissed*)

**0649-97-U:** Patricia Black and Wendy Harris (Applicant) v. Ontario Public Service Employees Union (Respondent) v. St. Thomas Psychiatric Hospital (Intervener) (*Withdrawn*)

**0651-97-U:** Canadian Union of Public Employees Local 1602 (Applicant) v. Haliburton, Kawartha, Pine Ridge District Health Unit (Respondent) (*Granted*)

**0723-97-U:** Communication, Energy and Paperworkers Union of Canada, Local 87-M Southern Ontario Newspaper Guild (Applicant) v. St. Catharines Standard, a Division of Southam Inc. (Respondent) (*Withdrawn*)

**0785-97-U:** Hotel, Restaurant and Hospitality Service Employees Union, Local 442 (Applicant) v. Canadian Niagara Hotels Inc. and Music Legends Limited c.o.b. as Hard Rock Cafe and 525230 Ontario Ltd. c.o.b. Terrace Food Court (Respondents) (*Withdrawn*)

**0856-97-U:** Jose Moreira (Applicant) v. Providence Manor Employees' Association (Respondent) (*Withdrawn*)



**0866-97-U:** Chris Inch (Applicant) v. International Brotherhood of Electrical Workers, Local 773 (Respondent) (*Dismissed*)

**0952-97-U:** Mike Foley (Applicant) v. United Steelworkers of America (Respondent) v. Inco Limited (Intervener) (*Withdrawn*)

**0966-97-U:** International Brotherhood of Electrical Workers, Construction Council of Ontario (Applicant) v. Carlo's Electric Limited (Respondent) v. Carlo's Electric Employees Association (Intervener) (*Dismissed*)

**0995-97-U:** Kit Heintz (Applicant) v. The Hospitality, Commercial & Service Employees Union Local 73 & Hillside Townhouses Ltd. c.o.b. as the Victoria Inn, Thunder Bay, Ontario (Respondents) (*Withdrawn*)

**1093-97-U:** Jeanine M. Anderson (Applicant) v. London and District Services Union, Local 220, Service Employees International Union (Respondents) v. Kitchener-Waterloo Health Centre of the Grand River Hospital Corporation (Intervener) (*Withdrawn*)

**1224-97-U:** Labourers' International Union of North America, Local 183 (Applicant) v. Apollo 8 Maintenance Services Ltd. and Sham Celwa (Respondents) (*Withdrawn*)

**1319-97-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Kingston Dodge Chrysler (1980) Ltd. (Respondent) (*Withdrawn*)

**1385-97-U:** Alain J. Brissette (Applicant) v. Union Local 444 (Respondent) (*Withdrawn*)

**1394-97-U:** Gerardo Osorio (Applicant) v. C.A.W. Local #29 (Respondent) v. Consumers Glass (Intervener) (*Withdrawn*)

**1466-97-U:** Robert J. Fowler (Applicant) v. Ontario Nurses' Association (Respondent) (*Dismissed*)

**1467-97-U:** Krystyna Basile (Applicant) v. Hotel Employees Restaurant Employees Union Local 75 (Respondent) v. The King Edward (Intervener) (*Withdrawn*)

**1589-97-U:** Yu Yue Chen (Applicant) v. Regal Constellation Hotel Limited (Respondent) (*Dismissed*)

**1609-97-U; 1610-97-U:** Brian David Squirrell (Applicant) v. United Food and Commercial Workers International Union, Local 391W and Soft Drink Workers Joint Local Executive Council (Respondent) v. The Minute Maid Company Canada Inc. (Intervener); Brian David Squirrell (Applicant) v. Coca Cola Foods (Minute Maid) (Respondent) (*Dismissed*)

**1611-97-U:** Dawit Woldeyesus (Applicant) v. L.I.U.N.A. Local 183 (Respondent) v. Unit Park Holdings Inc. c.o.b. as Unit Park (Intervener) (*Withdrawn*)

**1618-97-U:** Ontario Nurses' Association (Applicant) v. St. Elizabeth Visiting Nurses Association of Ontario (Respondent) (*Withdrawn*)

**1946-97-U:** Hôpital Hôtel Dieu Hospital (Cornwall) (Applicant) v. Ontario Public Service Employees Union (Respondent) (*Withdrawn*)

**1958-97-U:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Grande Cheese Co. Ltd. (Respondent) (*Withdrawn*)

**1966-97-U:** Teamsters Local Union 938 (Applicant) v. Superior Propane Inc. (Respondent) (*Withdrawn*)

**2092-97-U:** United Food and Commercial Workers International Union, Local 175 & 633 (Applicant) v. Best Western Highland Inn (Respondent) (*Withdrawn*)

**2167-97-U; 2177-97-U:** Bill McKinney (Applicant) v. United Steelworkers of America (Respondent); Bill McKinney (Applicant) v. Steelcat Task Force (Respondent) (*Withdrawn*)

**2175-97-U:** Ontario Liquor Boards Employees' Union (Applicant) v. Liquor Control Board of Ontario (Respondent) (*Withdrawn*)

**2181-97-U:** IWA - Canada, Local 1-1000 (Applicant) v. Hawkesbury Knitting Mills (Respondent) (*Terminated*)

**2212-97-U:** Gina Pellegrino (Applicant) v. Teamsters Local 879 (Respondent) (*Dismissed*)

**2221-97-U:** United Steelworkers of America (Applicant) v. Goshen Rubber of Canada, Limited (Respondent) (*Withdrawn*)

**2250-97-U:** Ralph Maze (Applicant) v. Teamsters Local Union 230, Affiliated with the International Brotherhood of Teamsters (Respondent) (*Dismissed*)

**2279-97-U:** Ontario Nurses' Association (Applicant) v. Comcare (Canada) Limited (Respondent) (*Dismissed*)

**2326-97-U:** Hôpital Hôtel Dieu Hospital (Cornwall) (Applicant) v. Ontario Public Service Employees Union (Respondent) (*Withdrawn*)

**2335-97-U:** Angela Sigrist (Applicant) v. UFCW Union (Respondent) (*Withdrawn*)

**2351-97-U:** Jean Miller & Diana McKitty (Applicant) v. Canadian Union of Public Employees (C.U.P.E.) Local 1394 (Respondent) v. Extendicare (Canada) Inc. (Intervener) (*Withdrawn*)

**2388-97-U:** Independent Paperworkers of Canada (Applicant) v. Bird Packaging Limited (Respondent) (*Withdrawn*) .

**2406-97-U:** Sam Kamin (Applicant) v. The Teamsters Union Local 419 (Respondent) (*Dismissed*)

**2412-97-U:** The International Association of Machinists and Aerospace Workers Local 905 (Applicant) v. Messier Dowty Inc. (Respondent) (*Dismissed*)

**2413-97-U:** Scott Mills (Applicant) v. Wayne Maslen (Rep) Teamsters Union Local 938 (Respondent) (*Dismissed*)

**2432-97-U:** Marcia Mableson (Applicant) v. Ontario Nurses' Association (Respondent) (*Dismissed*)

**2463-97-U:** Albert McBane (Applicant) v. (Teamsters Union) Milk & Bread Drivers and Dairy Employees Caterers and Allied Employees Local Union 647 (Respondent) (*Dismissed*)

**2521-97-U:** Michael James Jones (Applicant) v. Evans Security (Respondent) (*Dismissed*)

**2582-97-U:** International Association of Bridge, Structural and Ornamental Ironworkers, Local 700 (Applicant) v. Millwrights, Local 1592, United Brotherhood of Carpenters and Joiners of America - Paul Fitzgerald, Canadian Auto Workers Union, Local 1520 - Ron Jones - Larry Haigh, Ford Motor Company of Canada Limited - B. Wagner - R.J. Weeks (Respondents) (*Withdrawn*)

**2662-97-U:** Don Seyfert (Applicant) v. The United Steel Workers of America (Respondent) (*Withdrawn*)

**2752-97-U:** Anselmo Mijares (Applicant) v. Canadian Service Sector, Division of the United Steelworkers of America (Respondent) (*Dismissed*)

**2767-97-U:** Makhan Mann (Applicant) v. Carpenter Union (Respondent) (*Dismissed*)

## APPLICATION FOR INTERIM ORDER

**2605-97-M:** International Association of Bridge, Structural and Ornamental Ironworkers, Local 700 (Applicant) v. Millwrights, Local 1592, United Brotherhood of Carpenters and Joiners of America - Paul Fitzgerald, Canadian Auto Workers Union, Local 1520 - Ron Jones - Larry Haigh, Ford Motor Company of Canada Limited - B. Wagner - R.J. Weeks (Respondents) (*Withdrawn*)

## APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

**1770-97-M:** Sheet Metal Workers' International Association Production Local Union 540 (Applicant) v. Kindred Industries (Division of EMCO Limited) (Respondent) (*Granted*)

**2330-97-M:** Local Union 636, International Brotherhood of Electrical Workers (Applicant) v. Clinton Public Utilities Commission (Respondent) (*Granted*)

**2424-97-M:** Canadian Timken Limited (Applicant) v. United Steelworkers of America, Local 4906 (Respondent) (*Granted*)

## TRUSTEESHIP

**2330-96-T:** International Union of Bricklayers and Allied Craftworkers (Applicant) v. Local 10 of the International Union of Bricklayers and Allied Craftworkers (Respondent) (*Granted*)

## JURISDICTIONAL DISPUTES

**4204-96-JD; 4206-96-JD; 0013-97-JD; 1289-97-JD:** Millwrights District Council of Ontario and its Local 1425 (Applicant) v. Comstock Canada Ltd. and Labourers' International Union of North America, Local 1036 (Respondents); Iron Workers District Council of Ontario and International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 786 (Applicants) v. Comstock Canada and Labourers' International Union of North America, Local 1036 (Respondents); United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 508 (Applicant) v. Comstock Canada Ltd. and Labourers' International Union of North America, Local 1036 (Respondents); Sheet Metal Workers' International Association, Local 504 (Applicant) v. Comstock Canada Ltd. and Labourers' International Union of North America, Local 1036 (Respondents) (*Granted*)

**0096-97-JD:** Labourers' International Union of North America, Local 1059 (Applicant) v. International Brotherhood of Painters and Allied Trades, Local 1590, Ontario Hydro, Electrical Power Systems Construction Association, Dupont Painting Contracting Limited (Respondents) (*Granted*)

**0876-97-JD:** Labourers' International Union of North America, Local 1036 (Applicant) v. Walter & SCI Construction (Canada) Ltd. and United Brotherhood of Carpenters and Joiners of America, Local 446 (Respondents) (*Dismissed*)

## COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

**2849-96-OH:** Sheera MacFarlane (Applicant) v. Kenora-Patricia Child & Family Services (Respondent) (*Terminated*)

**0341-97-OH:** Joe Rooke (Applicant) v. Stelco Inc. Mr. A. R. Gallimore Mr. R. Royle Mr. D. Rankin Mr. E. Rock (Respondent) (*Withdrawn*)

**0973-97-OH:** Wayne Thurlby (Applicant) v. ADH Custom Metal Fabricators Inc. (Respondent) (*Withdrawn*)



**1801-97-OH:** Barbara Stephenson (Applicant) v. Central Bakery, A Division of Corporate Foods Limited (Respondent) v. Bakery, Confectionery & Tobacco Workers Union, Local 264 (Intervener) (*Withdrawn*)

**1902-97-OH:** Allan Binsley (Applicant) v. Tammy Veysey (Respondent) (*Withdrawn*)

## COLLEGES COLLECTIVE BARGAINING ACT

**4661-94-M:** OPSEU (Local 559) (Applicant) v. Centennial College of Applied Arts and Technology (Respondent) (*Granted*)

## CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

**2327-97-M:** Sun Parlour Emergency Services Inc. (Applicant) v. Service Employees International Union, Local 210 (Respondent) (*Withdrawn*)

## CONSTRUCTION INDUSTRY GRIEVANCES

**0331-96-G:** Sheet Metal Workers' International Association, Local 473 (Applicant) v. W & S Services Limited, Sutherland-Schultz Limited, Wilson & Somerville Limited (Respondents) (*Withdrawn*)

**1605-96-G:** Ontario Allied Construction Trades Council and Labourers' International Union of North America, Local 183 (Applicant) v. Ontario Hydro and The Electrical Power Systems Construction Association (Respondents) (*Granted*)

**1943-96-G; 1944-96-G:** Sheet Metal Workers' International Association, Local 562 (Applicant) v. Walden Roofing and Sheet Metal Company Ltd. and Watertight Roofing Services Limited (Respondents) (*Withdrawn*)

**2124-96-G:** Sheet Metal Workers' International Association, Local 537 (Applicant) v. Sayers & Associates Limited (Respondent) (*Withdrawn*)

**3396-96-G:** International Union of Operating Engineers, Local 793 (Applicant) v. RBW Group (Respondent) (*Withdrawn*)

**3781-96-G:** International Union of Operating Engineers, Local 793 (Applicant) v. RBW Group (Respondent) (*Withdrawn*)

**0387-97-G; 0825-97-G:** International Union of Operating Engineers, Local 793 (Applicant) v. H. Kerr Construction Limited (Respondent) (*Endorsed Settlement*)

**1380-97-G; 1643-97-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Standard Underground High Voltage Ltd. (Respondent); International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Power Cable Installations (Toronto) Limited (Respondent) (*Dismissed*)

**1479-97-G; 1819-97-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. Filomena and/or John Luis, operating as Oshawa Steel Reenforce, Sam Steel, Rockton Contractors Inc. (Respondents); International Association of Bridge, Structural and Ornamental Iron Workers, Local 765 (Applicant) v. Filomena and/or John Luis operating as Oshawa Steel Reenforce, Sam Steel, Rockton Contractors Inc. (Respondents) (*Withdrawn*)

**1580-97-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 759 (Applicant) v. Weldland Steel Limited (Respondent) (*Withdrawn*)

**1814-97-G:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Casebridge Construction Limited (Respondent) (*Granted*)

**1868-97-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. The State Group Limited (Respondent) (*Withdrawn*)

**2052-97-G:** International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Applicant) v. PCL Constructors Canada Inc., Bank of Montreal (Respondents) (*Withdrawn*)

**2075-97-G:** United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. Century General Contracting Ltd. (Respondent) (*Endorsed Settlement*)

**2076-97-G:** United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. Pace Construction Company (Respondent) (*Endorsed Settlement*)

**2135-97-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Langley Utilities Contracting Ltd. (Respondent) (*Endorsed Settlement*)

**2162-97-G:** International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. Adam's Industrial Insulations Ltd. (Respondent) (*Granted*)

**2182-97-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Nunzio Congiusti c.o.b. as E. C. Welding (Respondent) (*Granted*)

**2183-97-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Demitec Limited (Respondent) (*Withdrawn*)

**2208-97-G:** Labourers' International Union of North America, Local 506 (Applicant) v. City Concrete Cutting & Rentals Ltd. operating as Ace Concrete Cutting (Respondent) (*Endorsed Settlement*)

**2220-97-G:** United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. Susgin Construction Ltd. (Respondent) (*Endorsed Settlement*)

**2254-97-G:** International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Applicant) v. Etobicoke Ironworks Limited (Respondent) (*Granted*)

**2256-97-G:** International Union of Bricklayers and Allied Craftsmen, Local 1, Ontario (Applicant) v. Narco Canada Inc. (Respondent) (*Granted*)

**2284-97-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. Mainway Industrial Installations Inc. (Respondent) (*Granted*)

**2317-97-G:** International Union of Elevator Constructors, Local 50 (Applicant) v. Dover Corporation (Canada) Ltd. (Respondent) (*Withdrawn*)

**2345-97-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Tar Can Construction (Sault) Ltd. (Respondent) (*Withdrawn*)

**2396-97-G:** Sheet Metal Workers' International Association Local Union No. 285 (Applicant) v. Custom Gas Heating Limited o/a National Heating & Air Conditioning Sales (Respondent) (*Granted*)

**2402-97-G:** Carpenters and Allied Workers Local Union No. 249 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Cupido Construction (1989) Ltd. (Respondent) (*Withdrawn*)

**2429-97-G:** Sheet Metal Workers' International Association, Local 30 (Applicant) v. Dufferin Roofing Ltd. (Respondent) (*Endorsed Settlement*)

**2448-97-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Modern Crane Rentals (Respondent) (*Endorsed Settlement*)

**2453-97-G:** Sheet Metal Workers' International Association, Local 537 (Applicant) v. Calorific Construction Limited (Respondent) (*Endorsed Settlement*)

**2497-97-G:** International Brotherhood of Painters & Allied Trades, Glaziers Local 1819 (Applicant) v. Monarch Installations (Respondent) (*Granted*)

**2506-97-G:** United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. P.A. Richens (Respondent) (*Granted*)

**2533-97-G:** International Brotherhood of Electrical Workers, Local Union 1687 (Applicant) v. 715720 Ontario Inc. c.o.b. as Tri Star Electric (Respondent) (*Granted*)

**2534-97-G:** The Millwright District Council of Ontario, United Brotherhood of Carpenters and Joiners of America on its own behalf and on behalf of Local 1916 (Applicant) v. Calorific Construction Limited (Respondent) (*Endorsed Settlement*)

**2539-97-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sofam Installations Ltd. (Respondent) (*Endorsed Settlement*)

**2571-97-G:** Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Knights Drywall Inc. (Respondent) (*Withdrawn*)

**2572-97-G:** Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. P & E Drywall Ltd. (Respondent) (*Withdrawn*)

**2581-97-G:** International Brotherhood of Electrical Workers, Local 105 (Applicant) v. Sutherland-Schultz Inc. (Respondent) (*Endorsed Settlement*)

**2611-97-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. J.L.A. Clarke Contracting Ltd. (Respondent) (*Granted*)

**2622-97-G:** Carpenters and Allied Workers Local Union No. 249 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Bellai Brothers Ltd. (Respondent) (*Granted*)

**2656-97-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Vantage Electric Services Inc. (Respondent) (*Withdrawn*)

**2659-97-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Ogden Charters Electric Ltd. (Respondent) (*Withdrawn*)

**2660-97-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Canadian Power Systems (Respondent) (*Withdrawn*)

## **REFERRAL FROM MINISTER (SEC. 3(2)) HLDA**

**0869-97-M:** Lifestyle Retirement Communities Partnership c.o.b. as Beechwood Place Retirement Residences (Applicant) v. Christian Labour Association of Canada (Respondent) (*Granted*)

## **APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION**

**0551-95-U:** Victoria Shymlosky et al. (Applicant) v. The Board of Education for the City of Hamilton, The Ontario Secondary School Teachers' Federation (Respondents) (*Denied*)

**2870-96-OH:** Teresita Lanuza (Applicant) v. The Toronto Hospital (Respondent) v. Ontario Nurses' Association (Intervener) (*Denied*)



**2903-96-U; 2904-96-U:** Retail Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America and Local 1688, The Ontario Taxi Union (Applicant) v. Paul Gleitman, Hillel Gudes, Chris Chronopoulos, Nabil Nassar, Jamil Rawadat and Associated Toronto Taxicab Co-operative Limited (Respondents) v. Co-op Taxi Associates' Committee (Intervener); Retail Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America and Local 1688, The Ontario Taxi Union (Applicant) v. Paul Gleitman, Hillel Gudes, Chris Chronopoulos, Nabil Nassar, Jamil Rawadat and Associated Toronto Taxicab Co-operative Limited (Respondents) (*Denied*)

**3301-96-U:** Pritam Singh Badyal (Applicant) v. Hemispheres Int'l Mfg. Co. and United Steelworkers of America, Local 1031 (Respondents) (*Denied*)

**3482-96-U:** Teresita Lanuza (Applicant) v. Ontario Nurses' Association (Respondent) v. The Toronto Hospital (Intervener) (*Dismissed*)

**3577-96-U:** Joseph Persaud (Applicant) v. U.S.W.A. Local 8505 (Respondent) (*Dismissed*)

**4312-96-U:** Kathleen Barabas (Applicant) v. Local 222 of C.A.W. (Canadian Auto Workers) (Respondent) v. Mackie Automotive Systems (Whitby) Inc. (Intervener) (*Dismissed*)

**0020-97-U:** Tom Gibeault (Applicant) v. Canadian Telephone Employees' Association (Respondent) v. Tele-Direct (Publications) Inc. (Intervener) (*Dismissed*)

**0241-97-U:** Stanley H. Davis (Applicant) v. Communications Energy and Paperworkers Union of Canada Local 91-0 Toronto Typographical Union (Respondent) v. University of Toronto Press Incorporated (Intervener) (*Denied*)

**1869-97-U:** Michelle Rondeau (Applicant) v. Robert Dickson, Superintendent, Sarnia Jail (Respondent) (*Denied*)

**2005-97-R:** Canadian Union of Professional Security Guards (Applicant) v. Evan's Investigation and Security Limited (Respondent) (*Dismissed*)

## **RIGHT OF ACCESS**

**2580-97-M:** International Brotherhood of Retail, Food Industrial, & Services International Union (Applicant) v. 935772 Ontario Ltd. c.o.b. as "Royal Taxi" (Respondent) (*Withdrawn*)

## **SECTOR DETERMINATION (SECTION 153) (FORMERLY S.150)**

**0564-97-M:** H. Kerr Construction Limited (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) (*Endorsed Settlement*)

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# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING NOVEMBER 1997

## APPLICATIONS FOR CERTIFICATION

### Bargaining Agents Certified Subsequent to Vote

**3961-95-R:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Dominion Sheet Metal & Roofing Works (Respondent)

Unit: "all construction workers of Dominion Sheet Metal & Roofing Works engaged in new residential subdivision construction (defined as 3 or more units) in residential low rise buildings (defined as non-elevated housing of not more than 4 stories in height excluding basement) in the installation of aluminium and vinyl siding, eavestrophing, soffit and fascia in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria; the County of Simcoe and the District Municipality of Muskoka and the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, save and except non-working foremen, persons above the rank of non-working foremen, office and clerical staff" (16 employees in unit)

Number of names of persons on revised voters' list	38
Number of persons who cast ballots	35
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	35
Number of ballots marked in favour of applicant	27
Number of ballots marked against applicant	8

**1308-97-R:** The Association of Allied Health Professionals: Ontario (Applicant) v. Humber River Regional Hospital, Finch Avenue Site (Respondent) v. Ontario Public Service Employees Union (Intervener)

Unit: "all paramedical employees of the Humber River Regional Hospital in Metropolitan Toronto, save and except medical laboratory technologists, laboratory assistants, ultrasound and radiology technologists, respiratory therapists, nuclear medicine technologists, electro-encephalograph technologists, electrocardiogram technicians, stress laboratory technicians, pulmonary function technicians, echocardiography technicians, ophthalmology technicians, glaucoma technicians, ear-nose and throat technicians, cardiovascular technicians, electric shock therapists, blood collection and darkroom assistants, students, supervisors, persons above the rank of supervisors and persons covered by subsisting collective agreements" (60 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	61
Number of persons who cast ballots	37
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	35
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	26
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	2

**1717-97-R:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Victorian Order of Nurses-Sudbury Branch (Respondent) v. Ontario Nurses' Association (Intervener)

Unit: "all employees of the Victorian Order of Nurses - Sudbury Branch employed on Manitoulin Island, save and except nurse manager, persons above the rank of nurse manager, and persons working as personal support workers and homemakers" (24 employees in unit)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	11
Number of ballots segregated and not counted	2

**1996-97-R:** United Steelworkers of America (Applicant) v. Metro Taxi Ltd. c.o.b. as Capital Taxi (Respondent)

Unit: "all employees of Metro Taxi Ltd. c.o.b. as Capital Taxi operating as drivers and/or owners of taxi-cabs licensed to operate in the City of Vanier, save and except supervisors, dispatchers, telephone staff, multi-car/multi-plate owners, persons above the rank of supervisor and office and clerical staff" (40 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	40
Number of persons who cast ballots	37
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	36
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	11
Number of ballots segregated and not counted	1

**2157-97-R:** United Steelworkers of America (Applicant) v. Sako Materials Limited (Respondent)

Unit: "all employees of Sako Materials Limited in the town of Hawkesbury, save and except forepersons, persons above the rank of foreperson, office and sales staff, employees regularly employed for less than twenty-four hours per week, students employed during the school vacation period, and security guards" (16 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	1

**2276-97-R:** International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. 509806 Ontario Limited o/a Fuller Utility Services (Respondent)

Unit: "all electricians and electricians' apprentices, linemen and linemen apprentices in the employ of 509806 Ontario Limited o/a Fuller Utility Services in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices, linemen and linemen apprentices in the employ of 509806 Ontario Limited o/a Fuller Utility Services in all other sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	5
Number of spoiled ballots	0

Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	2

**2455-97-R:** London and District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Euro-United Corporation (Respondent)

Unit: "all employees of Euro-United Corporation in the City of Kitchener, save and except supervisors, persons above the rank of supervisor and office and clerical staff" (13 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	7
Number of ballots segregated and not counted	3

**2480-97-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Honeywell Limited (Respondent)

Unit: "all building operators of Honeywell Limited employed in the City of North Bay, Ontario, save and except supervisors and persons above the rank of supervisor" (2 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	0

**2522-97-R:** Canadian Union of Professional Security-Guards (Applicant) v. Top Guards Inc. (Respondent)

Unit: "all employees of Top Guards Inc. employed as Security Guards at Ontario Ministry of Transportation, 1201 Wilson Avenue, Downsview, Ontario, save and except directors and persons above the rank of director" (40 employees in unit)

Number of names of persons on revised voters' list	37
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of ballots marked in favour of applicant	19
Number of ballots marked against applicant	0

**2560-97-R:** International Union of Bricklayers and Allied Craftsmen, Local 31 (Applicant) v. Home Sweet Home Tile (Respondent)

Unit: "all journeymen and apprentice marble, tile, terrazzo, cement masons, resilient floor layers and their helpers in the employ of Home Sweet Home Tile in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice marble, tile, terrazzo, cement masons, resilient floor layers and their helpers in the employ of Home Sweet Home Tile in all other sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	3
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Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0

**2565-97-R:** Labourers' International Union of North America, Local 506 (Applicant) v. The Board of Governors of Exhibition Place (Respondent)

Unit: "all construction labourers and employees engaged in cement finishing, waterproofing and restoration work in the employ of The Board of Governors of Exhibition Place in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers and employees engaged in cement finishing, waterproofing and restoration work in the employ of The Board of Governors of Exhibition Place in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0

**2576-97-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Senior Living Management c.o.b. as Innisfil Beach Gardens Retirement Residence (Respondent)

Unit: "all employees of Senior Living Management c.o.b. as Innisfil Beach Gardens Retirement Residence in the Town of Innisfil, save and except the Nurse Manager, persons above the rank of Nurse Manager, Food Service Supervisor and the secretary" (24 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	24
Number of ballots marked in favour of applicant	19
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	3

**2592-97-R:** International Association of Machinists and Aerospace Workers (Applicant) v. Mancuso Chemicals Limited (Respondent)

Unit: "all employees of Mancuso Chemicals Limited in the City of Niagara Falls, Ontario, save and except Managers, persons above the rank of Manager, office and sales staff" (9 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	2

**2617-97-R:** Certified Staff Association (Applicant) v. Family and Children's Services of Guelph and Wellington County (Respondent)

Unit: "all employees of the Family and Children's Services of Guelph and Wellington County save and except Team Leaders and persons above the rank of Team Leader, Human Resources Assistant, Executive Assistant, Information Systems Coordinator, Summer Students, employees within the Onward Willow-Better Beginnings, Better Futures and Brant-Waverley Neighbourhood Programs, Students who are Crown Wards and hired on a part-time basis during the school year" (50 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	66
Number of persons who cast ballots	61
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	34
Number of ballots marked against applicant	19
Number of ballots segregated and not counted	8

**2635-97-R:** Ontario Public Service Employees Union (Applicant) v. Henwood Corrections Ltd. (Respondent)

Unit: "all employees of Henwood Corrections Ltd. in the City of Oshawa, save and except Director, persons above the rank of Director and Bookkeeper" (15 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	3

**2643-97-R:** Repla Employees' Association (Applicant) v. Repla Limited (Respondent)

Unit: "all employees of Repla Limited in the Town of Oakville, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff, engineering staff, persons regularly employed for not more than twenty-four hours a week, and students employed during the school vacation period and a co-op term" (46 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	46
Number of persons who cast ballots	44
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	44
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	24
Number of ballots marked against applicant	19

**2689-97-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Spill Tech Industries Inc. (Respondent)

Unit: "all employees of Spill Tech Industries Inc. in the City of Sault Ste. Marie, save and except lead hands, persons above the rank of lead hand, office, clerical, sales and technical staff" (47 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	56
Number of persons who cast ballots	52
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	44
Number of segregated ballots cast by persons whose names appear on voter's list	8
Number of ballots marked in favour of applicant	28
Number of ballots marked against applicant	16
Number of ballots segregated and not counted	8

**2698-97-R:** Canadian Union of Public Employees (Applicant) v. Corporation of the Township of Cumberland (Respondent)

Unit: "all office, clerical and technical employees of the Corporation of the Township of Cumberland, including the Township of Cumberland Public Library, save and except the following: Directors, Managers and Superintendents and persons above the ranks of Director, Manager and Superintendent; Senior Municipal Law Enforcement Officer; Administrative Assistants III; Administrative Assistant IV (Planning and Economic Development Department); Finance Administrative Officer (Roads Division); Administrative Assistant I, Executive Coordinator (Mayor's Office); Human Resources Officer, Payroll Clerk (Department of Human Resources); Deputy Clerk; Public Service Librarian; Administrative Assistant to the C.A.O.; students employed during school vacation periods and all co-op and work term students; and any person for whom a trade union held bargaining rights on the date of application" (68 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	68
Number of persons who cast ballots	64
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	34
Number of segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names do not appear on voters' list	10
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	30

**2705-97-R:** United Steelworkers of America (Applicant) v. Waltec Components, A Division of Emco Limited (Respondent)

Unit: "all employees of Waltec Components, A Division of Emco Limited at 75 Mason Street in the Town of Wallaceburg, save and except forepersons, persons above the rank of foreperson and office, clerical and sales staff" (147 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	147
Number of persons who cast ballots	142
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	142
Number of ballots marked in favour of applicant	88
Number of ballots marked against applicant	54

**2754-97-R:** Hospitality & Service Trades Union, Local 261 (Applicant) v. 1147310 Ontario Ltd. operating as Ottawa Hotel (Respondent)

Unit: "all employees of 1147310 Ontario Ltd. operating as Ottawa Hotel in the City of Vanier, save and except night managers and persons above the rank of night manager" (8 employees in unit)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of ballots marked in favour of applicant	8
Number of ballots segregated and not counted	4

**2759-97-R:** Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. Shui On Acquisition A (Respondent)

Unit: "all employees of the Shui On Acquisition A in Mississauga, Ontario, save and except supervisors and persons above the rank of supervisor, office and sales staff and security staff" (105 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	147
Number of persons who cast ballots	131



Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	100
Number of segregated ballots cast by persons whose names appear on voter's list	30
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	68
Number of ballots marked against applicant	30
Number of ballots segregated and not counted	31

**2765-97-R:** Niagara Health Care & Service Workers Union Local 302 Affiliated with the Christian Labour Association of Canada (Applicant) v. Nova Housekeeping Systems Ltd. (Respondent)

Unit: "all employees of Nova Housekeeping Systems Ltd. who perform housekeeping and laundry services at Lakeview Retirement Home, 339 Highway #8, Stoney Creek, Ontario and at Clarion Nursing Home, 337 Highway #8, Stoney Creek, Ontario, save and except supervisors and persons above the rank of supervisor" (12 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	3

**2778-97-R:** International Brotherhood of Electrical Workers' Local Union 353 (Applicant) v. Mill Works Mfg. Ltd. (Respondent)

Unit: "all employees of Mill Works Mfg. Ltd. in the Municipality of Metropolitan Toronto, save and except forepersons, persons above the rank of foreperson and office, clerical and sales staff" (3 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	2

**2794-97-R:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Consumers Gas Company Ltd. (Respondent)

Unit: "all employees of Consumers Gas Company Ltd. in the City of Ottawa and the City of Nepean, in the Regional Municipality of Ottawa-Carleton, save and except Manager, persons above the rank of Manager, office and clerical staff and persons for whom any trade union held bargaining rights as of October 28, 1997" (7 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of ballots marked in favour of applicant	6

**2803-97-R:** United Food and Commercial Workers International Union (Applicant) v. Chartwell Canada Corp. c.o.b. as Travelodge Toronto North (North York) (Respondent)

Unit: "all employees of Chartwell Canada Corp. c.o.b. as Travelodge Toronto North (North York), located at 50 Norfinch Drive, North York, Ontario, save and except office, clerical, and sales staff, accounting staff, audit staff, room checker staff and front desk staff, the restaurant, security officers, students employed during the school vacation period, supervisors and persons above the rank of supervisor" (40 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	7

**2820-97-R:** Labourers' International Union of North America, Local 506 (Applicant) v. Royal Agricultural Winter Fair of Canada (Respondent)

Unit: "all employees of Royal Agricultural Winter Fair of Canada employed in the Municipality of Metropolitan Toronto save and except supervisors, persons above the rank of supervisors, office, clerical, sales and technical employees" (15 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of ballots marked in favour of applicant	12
Number of ballots segregated and not counted	3

**2823-97-R:** United Automobile, Aerospace & Agricultural Implement Workers of America UAW (Applicant) v. Credit Counselling Services of Southwestern Ontario Incorporated (Respondent)

Unit: "all employees of Credit Counselling Services of Southwestern Ontario Incorporated in Lambton and Essex Counties, save and except Supervisors, and persons above the rank of Supervisors" (6 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	7
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	1

**2850-97-R:** Canadian Union of Professional Security-Guards (Applicant) v. Crown Security Services Inc. (Respondent)

Unit: "all employees of Crown Security Services Inc. employed as security guards, at 1201 Wilson Avenue, Downsview, Ontario, save and except directors, supervisors and persons above the rank of director and supervisor" (8 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	0

**2886-97-R:** Ontario Public Service Employees Union (Applicant) v. Children's Aid Society of the County of Prince Edward (Respondent)

Unit: "all employees of the Children's Aid Society of the County of Prince Edward in the County of Prince Edward, save and except Office Manager, Supervisor and persons above the rank of Office Manager, Supervisor" (14 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	13

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	1

**2895-97-R:** Canadian Union of Public Employees (Applicant) v. Fairfield Manor (Respondent)

Unit: "all employees of Fairfield Manor in the City of Kingston save and except the Director of Nursing and Administrator, persons above the rank of Director of Nursing and Administrator and Dietary Supervisor" (17 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	1

**2896-97-R:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Metal Tech Systems Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Metal Tech Systems Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Metal Tech Systems Inc. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	2

**2909-97-R:** International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Applicant) v. Tuberate Ltd. (Respondent)

Unit: "all employees of Tuberate, Ltd. employed at 763 Chester Street, Sarnia, save and except supervisors, persons above the rank of supervisor, office, sales and clerical staff, timekeepers, engineers, draftspeople, schedulers, planners, accounting staff, quality control personnel, estimators, and non-working foremen" (30 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	50
Number of persons who cast ballots	50
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	50
Number of ballots marked in favour of applicant	32
Number of ballots marked against applicant	18

**2922-97-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Maxi & Co. (Respondent)

Unit: "all employees of Maxi & Co. in the City of Mississauga, save and except Store Director, Assistant Store Directors, Department Managers, Office Employees, Inventory Controllers and Management Trainees" (120 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	128
Number of persons who cast ballots	70



Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	70
Number of ballots marked in favour of applicant	59
Number of ballots marked against applicant	11

**2957-97-R:** International Brotherhood of Electrical Workers, Local 773 (Applicant) v. Windsor Board of Education (Respondent)

Unit: "all journeymen and apprentice electricians and journeymen and apprentice linemen in the employ of Windsor Board of Education in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice electricians and journeymen and apprentice linemen in the employ of Windsor Board of Education in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman" (9 employees in unit)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	0

### **Applications for Certification Dismissed Without Vote**

**3937-96-R:** Hospitality & Service Trades Union, Local 261 (Applicant) v. Palladium Catering Services (Respondent)

### **Applications for Certification Dismissed Subsequent to Vote**

**3788-96-R:** Hospitality & Service Trades Union Local 261 (Applicant) v. Rock the Byward Market Corporation (Respondent)

Unit: "all employees of Rock the Byward Market Corporation located at 73 York St., Ottawa, save and except assistant managers and persons above the rank of assistant manager, restaurant chef, and office and clerical staff" (70 employees in unit)

Number of names of persons on revised voters' list	70
Number of persons who cast ballots	65
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	61
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	45
Number of ballots segregated and not counted	4

**3842-96-R:** International Brotherhood of Electrical Workers, Local Union 402 (Applicant) v. Pyramid Electric Corporation (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of Pyramid Electric Corporation in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all electricians and electricians' apprentices in the employ of Pyramid Electric Corporation in all other sectors of the construction industry in the District of Rainy River, save and except non-working foremen and persons above the rank of non-working foreman" (57 employees in unit)

Number of names of persons on revised voters' list	45
Number of persons who cast ballots	58
Number of spoiled ballots	1

Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	36
Number of ballots segregated and not counted	13

**1419-97-R:** Labourers' International Union of North America, Local 183 (Applicant) v. De Zen Construction Company Limited (Respondent)

Unit: "all construction labourers in the employ of De Zen Construction Company Limited in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	4
Number of names of persons on revised voters' list	6
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	4

**1420-97-R:** Ontario Nurses' Association (Applicant) v. St. Elizabeth Visiting Nurses Association of Ontario (Respondent)

Unit: "all registered and graduate nurses employed by St. Elizabeth Visiting Nurses Association of Ontario, Hamilton, save and except Directors and persons above the rank of Directors" (120 employees in unit)

Number of names of persons on revised voters' list	129
Number of persons who cast ballots	72
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	67
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	34
Number of ballots marked against applicant	35
Number of ballots segregated and not counted	3

**1992-97-R:** Hotel Employees Restaurant Employees Union Local 75 of the Hotel Employees and Restaurant Employees International Union (Applicant) v. 928598 Ontario Ltd. (Respondent) v. Denise Ouellette and Penny Beneteau and others (Intervenors)

Unit: "all employees of 928598 Ontario Ltd. employed at 3998 Walker Road and 1920 Ottawa Street in the City of Windsor, save and except Assistant Managers and persons above the rank of Assistant Manager" (39 employees in unit)

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	39
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	35
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	26

Number of ballots segregated and not counted	2
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**2067-97-R:** United Steelworkers of America (Applicant) v. McDermid Paper Convertors Limited (Respondent)

Unit: "all employees of Earl C. McDermid Limited in the City of Mississauga, save and except Supervisors and persons above the rank of Supervisor, and office, clerical, and sales staff" (55 employees in unit)

Number of names of persons on revised voters' list	48
Number of persons who cast ballots	32
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	25
Number of ballots segregated and not counted	4

**2540-97-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Elta Gas Services Ltd. (Respondent)

Unit: "all construction labourers, journeymen and apprentice pipe fitters and gas fitters and all employees engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, in the employ of Elta Gas Services Ltd. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman and chart changers" (57 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	57
Number of persons who cast ballots	57
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	55
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	20
Number of ballots marked against applicant	36
Number of ballots segregated and not counted	1

**2738-97-R:** Brewery, General and Professional Workers' Union (Applicant) v. Med-Chem Health Care Services (Respondent)

Unit: "all employees of the Med-Chem Laboratories Limited in the Municipality of Newmarket, save and except persons employed in a confidential capacity with respect to labour relations, section heads, supervisors and persons above the rank of section head and supervisor" (17 employees in unit)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	10
Number of ballots segregated and not counted	1

**2745-97-R:** United Steelworkers of America (Applicant) v. Ste. Mary's Manor Limited (Respondent)

Unit: "all employees of St. Mary's Manor Inc. in the City of Timmins, save and except the Manager and the persons above the rank of Manager." (21 employees in unit)

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17



Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	13

**2755-97-R:** Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC (Applicant) v. Wheeltronic Ltd. (Respondent) v. Group of Employees (Intervener)

Unit: "all employees of Wheeltronic Ltd. in the City of Mississauga save and except supervisors, persons above the rank of supervisor, and office and sales staff" (87 employees in unit)

Number of names of persons on revised voters' list	90
Number of persons who cast ballots	87
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	80
Number of segregated ballots cast by persons whose names appear on voter's list	7
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	40
Number of ballots marked against applicant	43
Number of ballots segregated and not counted	3

**2760-97-R:** Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. Novotel North York (Respondent)

Unit: "all employees of the Novotel North York, North York, Ontario, save and except supervisors and those above the rank of supervisors" (89 employees in unit)

Number of names of persons on revised voters' list	91
Number of persons who cast ballots	76
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	36
Number of ballots marked against applicant	36
Number of ballots segregated and not counted	3

**2781-97-R:** The United Food and Commercial Workers International Union (Applicant) v. Howard Johnson Plaza Hotel (Respondent)

Unit: "all front desk and night auditors save and except supervisors and those above the rank of supervisor at the Howard Johnson Hotel in the City of North York, in the Municipality of Metropolitan Toronto" (8 employees in unit)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	1

### Applications for Certification Withdrawn

**3117-97-R:** Canadian Health Care Workers (C.H.C.W.) (Applicant) v. Maple Leaf Gardens Ltd. (Respondent) v. Laundry, Linen Driver and Industrial Workers Union Local 847 ("Local 847") (Intervener)

## FIRST AGREEMENT - DIRECTION

**2667-97-FC:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 124 (Applicant) v. Saturn Distributing Inc. (Respondent) (*Terminated*)

## APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

**2001-95-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Lanterna Group Ltd. and Assago Construction Ltd. (Respondents) (*Terminated*)

**3572-96-R:** Employees' Association, St. Mary's of the Lake Hospital (Applicant) v. St. Mary's of the Lake Hospital (Respondent) v. Association of Allied Health Professionals: Ontario (AAHP:O) and Ontario Public Service Employees Union (Interveners) (*Withdrawn*)

**0298-97-R:** United Steelworkers of America (Applicant) v. Windsor Airline Limousine Services Limited o/a Veteran Cab Company and Capital Cab Company and those Parties Listed on Schedules "A" and "B" (Respondents) (*Granted*)

**0588-97-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Pro-Drain (1984) Construction Limited, T. J. Stone Delivery Ltd. (Respondents) (*Endorsed Settlement*)

**0889-97-R:** International Brotherhood of Electrical Workers, Local Union 1687 (Applicant) v. Leo Alarie and Sons Limited and LCL Contracting (Respondents) v. International Union of Operating Engineers, Local 793 (Intervener) (*Withdrawn*)

**1485-97-R:** United Brotherhood of Carpenters and Joiners of America, Local 93, and United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. C.G. Kearney Construction Limited, C.G. Kearney Construction (Canada) Limited, and 1222171 Ontario Inc. (Respondents) (*Withdrawn*)

**2568-97-R:** Marble, Tile, Terrazzo, Cement Masons, Resilient Floor Layers, Local 31 (Applicant) v. Toronto Tile & Granite Ltd. and Global Tile Inc. (Respondents) (*Granted*)

## SALE OF A BUSINESS

**3480-96-R:** Service Employees International Union, Local 204 (Applicant) v. Humber/Northwestern/York-Finch Hospital, Canadian Union of Public Employees, Local 1080 and Canadian Union of Public Employees, Local 3258 (Respondents) v. Ontario Public Service Employees Union, International Union of Operating Engineers, Local 796, Association of Allied Health Professionals: Ontario (Interveners) (*Granted*)

**3572-96-R:** Employees' Association, St. Mary's of the Lake Hospital (Applicant) v. St. Mary's of the Lake Hospital (Respondent) v. Association of Allied Health Professionals: Ontario (AAHP:O) and Ontario Public Service Employees Union (Interveners) (*Withdrawn*)

**0588-97-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Pro-Drain (1984) Construction Limited, T. J. Stone Delivery Ltd. (Respondents) (*Endorsed Settlement*)

**0889-97-R:** International Brotherhood of Electrical Workers, Local Union 1687 (Applicant) v. Leo Alarie and Sons Limited and LCL Contracting (Respondents) v. International Union of Operating Engineers, Local 793 (Intervener) (*Withdrawn*)

**1382-97-R:** Association of Allied Health Professionals: Ontario (Applicant) v. Humber River Regional Hospital, Humber Memorial Hospital, Northwestern General Hospital, York-Finch General Hospital, Ontario Public Service Employees' Union (Respondents) v. Canadian Union of Public Employees, Locals 1080 and 3258, Service Employees International Union, Local 204 (Interveners) (*Granted*)

**1485-97-R:** United Brotherhood of Carpenters and Joiners of America, Local 93, and United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. C.G. Kearney Construction Limited, C.G. Kearney Construction (Canada) Limited, and 1222171 Ontario Inc. (Respondents) (*Withdrawn*)

**1606-97-R:** The Northumberland Health Care Corporation (Applicant) v. Ontario Public Service Employees Union and its Local 344 and Ontario Nurses' Association (Respondents) v. Canadian Union of Public Employees and its Local 2628 (Intervener) (*Granted*)

**2001-97-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 4268 (Applicant) v. Capital Environmental Resources Inc. (Respondent) v. Big Bear Service Employees' Association (Intervener) (*Withdrawn*)

**2225-97-R; 2226-97-R:** Haliburton, Northumberland and Victoria Long-Term Care Access Centre (Applicant) v. Ontario Nurses' Association (Respondent); Haliburton, Northumberland and Victoria Long-Term Care Access Centre (Applicant) v. CUPE Local 1602 (Respondent) v. Ontario Nurses' Association (Intervener) (*Granted*)

**2568-97-R:** Marble, Tile, Terrazzo, Cement Masons, Resilient Floor Layers, Local 31 (Applicant) v. Toronto Tile & Granite Ltd. and Global Tile Inc. (Respondents) (*Granted*)

## UNION SUCCESSOR RIGHTS (SUCCESSOR STATUS)

**2465-97-R:** United Steelworkers of America (Applicant) v. Consumers Glass (Brampton) (Respondent) (*Granted*)

**2466-97-R:** United Steelworkers of America (Applicant) v. Canada Brick (Respondent) (*Granted*)

**2467-97-R:** United Steelworkers of America (Applicant) v. Windsor Ceramics, Division of Flextile Ltd. (Respondent) (*Granted*)

**2468-97-R:** United Steelworkers of America (Applicant) v. Hamilton Porcelains Limited (Respondent) (*Granted*)

**2469-97-R:** United Steelworkers of America (Applicant) v. Consumers Glass (Milton) (Respondent) (*Granted*)

**2470-97-R:** United Steelworkers of America (Applicant) v. Law Cranberry Resort Limited (Respondent) (*Granted*)

**2471-97-R:** United Steelworkers of America (Applicant) v. LOF Glass of Canada Ltd. (Respondent) (*Granted*)

**2472-97-R:** United Steelworkers of America (Applicant) v. Ralston Purina Canada Inc., Caledonia (Respondent) (*Granted*)

**2474-97-R:** United Steelworkers of America (Applicant) v. Lukian Plastic Closures Ltd. (Respondent) (*Granted*)

**2475-97-R:** United Steelworkers of America (Applicant) v. Winkpak Portion Packaging Ltd. (Respondent) (*Granted*)

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**1893-97-R:** Shawn Morrissey (Applicant) v. Labourers International Union of North America, Local 506 (Respondent) v. City Concrete Cutting & Rentals Ltd. (Intervener)

Unit: "[7 named individuals]" (7 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of ballots marked in favour of respondent	3
Number of ballots marked against respondent	4



**2159-97-R:** Patrick Melville-Laborde (Applicant) v. Brewery, General and Professional Workers' Union (Respondent) v. Diversey Lever Canada, A Division of U.L. Canada Inc. (Equipment Division) (Intervener)

Unit: "all its employees in its Equipment Division in Mississauga, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period" (13 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of ballots marked in favour of respondent	2
Number of ballots marked against respondent	11

**2242-97-R:** Jawahir L. Ganesh (Applicant) v. Canadian Union of Operating Engineers and General Workers, Local 101 (Respondent) v. QBD Cooling Systems Inc. (Intervener)

Unit: "all employees of QBD Cooling Systems Inc. in the City of Brampton, save and except supervisors, persons above the rank of supervisor, technical, sales, office and clerical employees" (52 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	52
Number of persons who cast ballots	46
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	45
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	19
Number of ballots marked against respondent	26
Number of names of persons on revised voters' list 1f152	
Number of persons who cast ballots	34
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	34
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	7
Number of ballots marked against respondent	26

**2385-97-R:** Geraldine Forshaw, on her own behalf and on behalf of a group of employees of ABC Infant and Toddler Centre (Applicant) v. Canadian Union of Public Employees and its Local 2204 (Respondent) v. ABC Infant and Toddler Centre (Intervener)

Unit: "all employees of ABC Infant and Toddler Centre of Ottawa in the City of Ottawa save and except Supervisors, persons above the rank of Supervisor and pending resolution by the Board, excluding as well, Head Teachers" (14 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of respondent	3
Number of ballots marked against respondent	6
Number of ballots segregated and not counted	3
Number of names of persons on revised voters' list	14
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of ballots marked in favour of respondent	5
Number of ballots marked against respondent	7

**2505-97-R:** Olga Zoretich (Applicant) v. Communications, Energy and Paperworkers Union of Canada and its Local 91-0, Toronto Typographical Union (Respondent) v. Benjamin Film Laboratories Limited (Intervener)

Unit: "all employees of Benjamin Film Laboratories Limited in the Municipality of Metropolitan Toronto, save and except independent drivers and contractors, personnel assistant, accounts payable clerk, sales department, supervisors and persons above the rank of supervisor" (38 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	37
Number of persons who cast ballots	37
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	37
Number of ballots marked in favour of respondent	21
Number of ballots marked against respondent	16

**2518-97-R:** Derek Carter (Applicant) v. Retail, Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America, Local 1688 (Respondent) v. Lacey's Taxi Ltd. (Intervener)

Unit: "all employees of Lacey's Taxi Ltd. in the City of Thunder Bay, save and except Supervisors, persons above the rank of Supervisor, clerical staff, garage staff and dispatchers" (40 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	36
Number of persons who cast ballots	27
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	27
Number of ballots marked in favour of respondent	4
Number of ballots marked against respondent	23

**2636-97-R:** Sue Poirier, on her own behalf and on behalf of a group of employees of Boulangerie Lanthier Limitee (Applicant) v. Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647 (Respondent) v. Lanthier Bakery Ltd. (Intervener)

Unit: "all employees of the Employer, employed in Alexandria, Ontario, save and except Office Manager, Controller and those above the rank of Office Manager and Controller, students employed for the summer vacation period, persons regularly employed for not more than 24 hours per week, and confidential secretary" (6 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of ballots marked in favour of respondent	3
Number of ballots marked against respondent	3

**2683-97-R:** Susan Smart (Applicant) v. United Food & Commercial Workers International Union, Local 351 (Respondent) v. Seapark Industrial Dry Cleaners Ltd. (Intervener)

Unit: "all employees of Seapark Industrial Dry Cleaners Ltd. at St. Catharines, Ontario, save and except foremen, foreladies, persons above the rank of foreman or forelady, drivers, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (32 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	32
Number of persons who cast ballots	31
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	31
Number of ballots marked in favour of respondent	5
Number of ballots marked against respondent	26

**2730-97-R:** Dave Gray (Applicant) v. Communications, Energy and Paperworkers Union of Canada (Respondent) v. Delphi Solutions Inc. (Intervener)

Unit: "employees of the company working at or out of the City of Mississauga" (8 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	7
Number of ballots segregated and not counted	2

**2812-97-R:** Shane Jensma (Applicant) v. The Retail, Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America, Local 448 (Respondent) v. Wendy's Restaurants of Canada Inc. (Intervener)

Unit: "all employees of Wendy's Restaurants of Canada Inc. at 243 Oxford Street East, London, Ontario, save and except shift supervisors and persons above the rank of the shift supervisor" (33 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	42
Number of persons who cast ballots	31
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	31
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	10
Number of ballots marked against respondent	20

**2885-97-R:** Lester Hinkson (Applicant) v. Retail, Wholesale Canada Canadian Service Sector, Division of the United Steelworkers of America, Local 1000 (Respondent)

Unit: "all employees of J.S. MacLaren Enterprises Inc. in the City of Ingersoll, save and except Assistant Managers and persons above the rank of Assistant Manager" (31 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	26
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	26
Number of ballots marked in favour of respondent	8
Number of ballots marked against respondent	18

**2933-97-R:** Cathie Woodward (Applicant) v. Teamsters Local 847 Laundry & Linen Drivers and Industrial Workers (Respondent) v. Mayfair Bingo (Intervener) (*Dismissed*)

**2996-97-R:** Lyse Denis (Applicant) v. United Steelworkers of America (Respondent) v. Intelligarde International Inc. (Intervener) (*Withdrawn*)

## APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE

**2900-97-U:** David Dobbin (Applicant) v. Ontario Secondary School Teachers' Federation, District 10 - Peel, Ontario Public School Teachers' Federation - Peel District, Peel Women Teachers' Association, Clinton Smith and James Rumbarger (Respondents) (*Withdrawn*)

## APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE (CONSTRUCTION INDUSTRY)

**2914-97-U:** River Oaks Homes Management Inc. (Applicant) v. Labourers' International Union of North America Local 183, Antonio Dionisio, Claudio Mazzotta and Joao (Batista) Alves (Respondents) v. KML Engineered



Homes Ltd., Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Interveners) (*Granted*)

## COMPLAINTS OF UNFAIR LABOUR PRACTICE

**3980-95-U:** Heather J. McDermott (Applicant) v. Maria Wysocki (OPSEU) (Respondent) (*Dismissed*)

**0835-96-U:** Daniel Mason (Applicant) v. Local 840 - Canadian Union of Public Employees (Respondent) v. Corporation of the City of York (Intervener) (*Terminated*)

**0959-96-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 2213 (Applicant) v. Touram Inc. (Respondent) (*Granted*)

**1029-96-U:** Roland Lancing (Applicant) v. Metropol Security (Respondent) v. United Steelworkers of America, Local 5296 (Intervener) (*Withdrawn*)

**1564-96-U:** Sebastian Studt (Applicant) v. Teamsters, Chemical Energy and Allied Workers, Local Union 1688 (Respondent) v. Redpath Sugars, Division of Redpath Ind. Ltd. (Intervener) (*Dismissed*)

**2264-96-U; 2857-96-U:** The Carleton Administration Support Certified Employees' Association (Applicant) v. The Carleton Board of Education (Respondent) (*Withdrawn*)

**2280-96-U:** Edward Kennedy (Applicant) v. Local 1256 Sarnia, Carpenters' Union Ron Carleton (Respondent) v. MLH & A Inc. (Intervener) (*Withdrawn*)

**2594-96-U:** Patricia Pankoff (Applicant) v. Canadian Auto Workers, Local 88 (Respondent) v. CAMI Automotive Inc. (Intervener) (*Withdrawn*)

**3296-96-U:** Steven Karikas (Applicant) v. CAW Local 80 (Respondent) v. Honeywell Limited (Intervener) (*Dismissed*)

**3305-96-U:** L'Association des employés (es) d'Ottawa-Carleton (Applicant) v. Conseil des écoles catholiques de langue française de la région d'Ottawa-Carleton (Respondent) (*Endorsed Settlement*)

**3345-96-U:** Victor Valencia (Applicant) v. Canadian Union of Public Employees, Local 767 (Respondent) v. Metro Toronto Housing Authority (Intervener) (*Dismissed*)

**3741-96-U:** Hospitality & Service Trades Union, Local 261 (Applicant) v. Palladium Catering Services Corporation and Rock the Byward Market Corp. (Respondents) (*Dismissed*)

**3813-96-U:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Dominion Sheet Metal & Roofing Works (Respondent) (*Withdrawn*)

**3931-96-U:** Canadian Union of Public Employees, Local 2119 (Applicant) v. Perth and Smith Falls District Hospital (Respondent) (*Withdrawn*)

**4022-96-U:** John Ouzas (Applicant) v. Labourers' International Union of North America, Local 837 (Respondent) (*Dismissed*)

**4211-96-U:** Ontario Provincial Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sears Canada Inc. (Respondent) v. The Cadillac Fairview Corporation Limited, Devan Properties Ltd. (Interveners) (*Withdrawn*)

**0090-97-U:** Doug Miller (Applicant) v. The Communications, Energy and Paperworkers Union of Canada, CLC and its Local 266 (Respondent) v. St. Lawrence Cement Inc. operating as Dufferin Aggregates (Intervener) (*Withdrawn*)

**0094-97-U; 0101-97-U:** Jacques Tremblay (Applicant) v. La Fraternité unie des charpentiers et des menuisiers d'Amérique, section locale 93, Ottawa (Respondent); Maurice Tremblay (Applicant) v. La Fraternité unie des charpentiers et des menuisiers d'Amérique, section locale 93, Ottawa (Respondent) (*Dismissed*)

**0253-97-U:** Teamsters Local Union No. 230, Affiliated with the International Brotherhood of Teamsters (Applicant) v. Mibro Partners and Kimbrox Packaging Limited (Respondents) (*Withdrawn*)

**0303-97-U; 0305-97-U:** Al Chambo, David Foss, Randy Ibey, Martin Medland Ian O'Brien, Mark O'Heron, Mike Stefaro and Stewart Shields (Applicants) v. National Grocers Co. Ltd. (Respondent) v. Retail Wholesale Canada Division of the United Steelworkers of America (Intervener); Al Chambo, David Foss, Randy Ibey, Martin Medland, Ian O'Brien, Mark O'Heron, Mike Stefaro and Stewart Shields (Applicants) v. Retail Wholesale Canada, Division of the United Steelworkers of America (Respondent) v. National Grocers Co. Ltd. (Intervener) (*Dismissed*)

**0358-97-U:** United Steelworkers of America (Applicant) v. Windsor Airline Limousine Services Limited o/a Veteran Cab Company and Capital Cab Company, Rajaei Quaqish, Kamel Sahom, and Majid Murad (Respondent) (*Granted*)

**0372-97-U:** Service Employees' International Union, Firemen & Oilers Council, Local 101 (Applicant) v. Kraft Canada Inc., Niagara Falls Plant (Respondent) (*Withdrawn*)

**0404-97-U:** Registered Practical Nurses (Full Time) Etobicoke General Hospital 5th Floor, Psychiatry (Applicant) v. Service Employees International Union Local 204 (Respondent) v. Etobicoke General Hospital (Intervener) (*Withdrawn*)

**0487-97-U:** Retail Wholesale Canada Canadian Service Sector, Division of the United Steelworkers of America, Local 414 (Applicant) v. 366838 Ontario Limited c.o.b. as City Wide Taxi (Respondent) (*Withdrawn*)

**0583-97-U; 0886-97-U:** United Food and Commercial Workers International Union Locals 175 and 633 (Applicant) v. The Great Atlantic & Pacific Company of Canada, Limited (Respondent); United Food and Commercial Workers International Union, Locals 175 and 633 (Applicant) v. The Great Atlantic & Pacific Company of Canada, Limited c.o.b. as Food Basics (Respondent) (*Withdrawn*)

**0687-97-U:** Ingrid Calderon (Applicant) v. United Food & Commercial Workers Locals 175 and 633 (Respondent) (*Withdrawn*)

**0695-97-U:** Larry M. Himel (Applicant) v. Office and Professional Employees' International Union, Local 550, Home Care Program for Metropolitan Toronto (Respondents) (*Withdrawn*)

**0773-97-U:** Lucy Drover (Applicant) v. Graphic Communications International Union, Local 100-M (Respondent) v. Lawson Mardon Packaging Inc. (o/a Lawson Mardon Flexible) (Intervener) (*Dismissed*)

**0835-97-U:** Saleem Farooqui (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW Canada) (Respondent) v. McDonnell Douglas Canada Ltd. (Intervener) (*Withdrawn*)

**0861-97-U:** Barbara Calder-Page (Applicant) v. St. Joseph's Villa and CUPE Local 1404 (Respondents) (*Withdrawn*)

**0882-97-U:** Nick Conway (Applicant) v. United Steelworkers of America Local 5297 (Respondent) (*Dismissed*)

**1008-97-U:** Thomas Charles Hunt (Applicant) v. Canadian Union of Public Employees (Respondent) v. Markham Stouffville Hospital (Intervener) (*Dismissed*)

**1052-97-U:** Hospitality, Commercial and Service Employees Union, Local 73 chartered by Hotel Employees Restaurant Employees International Union (Applicant) v. Societa Italiana Di Benevolenza Principe Di Piemonte c.o.b. as the Da Vinci Centre (Respondent) (*Withdrawn*)

**1053-97-U:** Hospitality, Commercial and Service Employees Union, Local 73 chartered by Hotel Employees Restaurant Employees International Union (Applicant) v. Societa Italiana Di Benevolenza Principe Di Piemonte c.o.b. as the Da Vinci Centre (Respondent) (*Granted*)

**1446-97-U:** United Brotherhood of Carpenters and Joiners of America, Local Union 1072 (Applicant) v. Mr. Pallet Inc. (Respondent) (*Withdrawn*)

**1465-97-U:** Joyce Farr (Applicant) v. Service Employees International Union Local 204 (Respondent) (*Withdrawn*)

**1469-97-U:** Gisele Noll (Applicant) v. Canadian Union of Public Employees and its Local 3586 (Respondent) v. County of Renfrew Miramichi Lodge (Intervener) (*Dismissed*)

**1538-97-U:** Vince Sessa (Applicant) v. Teamsters Local Union 938 (Respondent) v. Cott Beverages Inc. (Intervener) (*Dismissed*)

**1552-97-U:** Nolan Wheeler (Applicant) v. International Woodworkers of America Canada, Local 500 (Respondent) v. MacMillan Bathurst (Intervener) (*Dismissed*)

**1598-97-U:** United Food and Commercial Workers International Union, Local 175 & 633 (Applicant) v. Zellers Inc. (Respondent) (*Withdrawn*)

**1897-97-U:** United Steelworkers of America (Applicant) v. Provincial Security Services Ltd. (Respondent) (*Terminated*)

**2000-97-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 4268 (Applicant) v. Capital Environmental Resources Inc. and Canadian Waste Services Inc. (Respondents) v. Big Bear Service Employees' Association (Intervener) (*Withdrawn*)

**2063-97-U:** United Steelworkers of America (Applicant) v. A.J. Darling and Company Limited (Respondent) (*Withdrawn*)

**2192-97-U:** Judy Laughlin (Applicant) v. TRW, Midland and CAW Local 1411 (Respondents) (*Withdrawn*)

**2219-97-U; 3001-97-U:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Rapid Transformers Ltd. (Respondent) (*Withdrawn*)

**2323-97-U:** Lance K. McCutcheon (Applicant) v. Communications, Energy & Paperworkers Union, Local 324-2 (Respondent) v. Kenora Forest Products (Intervener) (*Withdrawn*)

**2411-97-U:** United Food & Commercial Workers International Union (Applicant) v. Kraft Canada Inc. (Respondent) (*Withdrawn*)

**2445-97-U:** International Association of Machinists and Aerospace Workers, Local 2374 (Applicant) v. Glendale Recreational Vehicles, a Division of Firan Corporation (Respondent) (*Withdrawn*)

**2510-97-U:** William Allan Moon (Applicant) v. Linda MacLane, Pres. C.U.P.E. Local 1909 (Respondent) (*Withdrawn*)

**2516-97-U:** London and District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Euro-United Corporation (Respondent) (*Terminated*)

**2523-97-U:** Romuald Jaworski (Applicant) v. Raul Rodriguez (Respondent) (*Withdrawn*)

**2634-97-U:** Gieseppe Zullo (Applicant) v. Amalgamated Transit Union Local 113 (Respondent) (*Dismissed*)



**2647-97-U:** David H. Tryon (Applicant) v. United Food and Commercial Workers International Union, Local 175 & 633, (Respondents) (*Withdrawn*)

**2670-97-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 124 (Applicant) v. Saturn Distributing Inc. (Respondent) (*Terminated*)

**2673-97-U:** Local 47, Sheetmetal Workers' International Association (Applicant) v. Pryor Metals Ltd. (Respondent) (*Withdrawn*)

**2692-97-U:** United Food and Commercial Workers International Union, Local 175 & 633 (Applicant) v. Loeb Markets (Respondent) (*Withdrawn*)

**2756-97-U; 2769-97-U; 2770-97-U:** Pat Kinsella (Applicant) v. OPSEU (Respondent) (*Dismissed*)

**2795-97-U:** John William Bolduc (Applicant) v. Communications, Energy & Paperworkers Union Local 31X (Respondent) (*Dismissed*)

**2836-97-U:** Ontario Nurses' Association (Applicant) v. Victorian Order of Nurses (Durham Region Branch) (Respondent) (*Withdrawn*)

**2838-97-U:** Gordon Norman Googoo (Applicant) v. CAW Union Local 385, Coca-Cola Bottling Ltd. (Respondents) (*Dismissed*)

**2849-97-U:** Hotel Employees Restaurant Employees Union, Local 75 of the Hotel Employees and Restaurant Employees International Union (Applicant) v. Novotel North York (Respondent) (*Withdrawn*)

**2856-97-U:** Rosalina S. Papa (Applicant) v. Metropolitan Hotel, Hotel Employees Restaurant Employees Union, Local 75 (Respondents) (*Dismissed*)

**2864-97-U:** James Wm. Grundy (Applicant) v. John Georgio's Bldg. Maintenance (Respondent) (*Dismissed*)

**2920-97-U:** Steeves & Rozema Enterprises Ltd., Sarnia, Ontario (Rosewood Manor Retirement Residence) (Applicant) v. London and District Service Workers' Union Local 220 chartered by the Service Employees' International Union (Respondent) (*Withdrawn*)

**2923-97-U:** Grant Clarence Taylor (Applicant) v. General Motors of Canada Limited (Respondent) (*Dismissed*)

**2932-97-U:** Sean Hogan (Applicant) v. Sterling Seward UFCW Local 1000A and Loblaws Co. (Respondents) (*Withdrawn*)

**2970-97-U:** International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Applicant) v. Tuberate Ltd. (Respondent) (*Withdrawn*)

## **APPLICATION FOR INTERIM ORDER**

**2333-97-M:** United Food & Commercial Workers International Union (Applicant) v. Kraft Canada Inc. (Respondent) (*Withdrawn*)

**3133-97-M:** United Food and Commercial Workers, Local 1227 (Applicant) v. Maple Leaf Pork, a Division of Maple Leaf Meats (Respondent) (*Dismissed*)

## **JURISDICTIONAL DISPUTES**

**2114-96-JD:** International Brotherhood of Electrical Workers, Local 1687 (Applicant) v. Labourers' International Union of North America, Ontario District Council, Labourers International Union of North America, Local 493 and Comstock Canada (Respondents) (*Withdrawn*)

## APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

**2652-96-M:** Christian Labour Association of Canada (Applicant) v. APANS Health Services Ltd., c.o.b. as Copper Terrace Long-Term Care Facility (Respondent) (*Dismissed*)

**2189-97-M:** Glass, Molders, Pottery, Plastics and Allied Workers International Union (Applicant) v. Stadco Polyproducts Inc. (Respondent) (*Dismissed*)

**3049-97-M:** Service Employees Union, Local 183 (Applicant) v. Quinte Manor Retirement Home (Respondent) (*Withdrawn*)

## COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

**0645-97-OH:** Manuel Fernandez (Applicant) v. Gordac Construction Inc., Mapcrete Construction Company Limited (Respondents) v. International Union of Operating Engineers, Local 793 (Intervener) (*Dismissed*)

**1390-97-OH:** Brett Fleming (Applicant) v. TACC Construction Ltd. (Respondent) (*Dismissed*)

**2132-97-OH:** Paul Da Rosa (Applicant) v. 1125963 Ontario Inc. o/a D. T. Construction Ltd. (Respondent) (*Terminated*)

## CONSTRUCTION INDUSTRY GRIEVANCES

**2949-95-G:** International Union of Bricklayers and Allied Craftsmen Local 2, Ontario and the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen (Applicant) v. Haelzle Masonry Ltd., Caza Masonry, Paul's Masonry (Respondents) (*Granted*)

**3735-95-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Consolidated Structures (Respondent) (*Terminated*)

**0934-96-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Plan Electric Co. (Respondent) (*Withdrawn*)

**0988-96-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Delta Catalytic Industrial Services Ltd. (Respondent) v. General Presidents' Maintenance Committee (Intervener) (*Granted*)

**3674-96-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Master Trades Ltd. (Respondent) (*Granted*)

**4237-96-G:** Sheet Metal Workers' International Association and Ontario Sheet Metal Workers' Conference for Local 47 (Applicant) v. Les Construction H.G.B. Inc. and Silentec Ltd. (Respondents) (*Endorsed Settlement*)

**0587-97-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Pro-Drain (1984) Construction Limited, T. J. Stone Delivery Ltd. (Respondents) (*Endorsed Settlement*)

**0890-97-G:** International Brotherhood of Electrical Workers, Local Union 1687 (Applicant) v. Leo Alarie and Sons Limited and LCL Contracting (Respondents) (*Withdrawn*)

**1027-97-G:** Mechanical Contractors Association Niagara Inc. and Lincoln Mechanical Contractors, A Division of Lincoln Plumbing & Heating Ltd. (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada and its Local 666 (Respondent) (*Withdrawn*)

**1091-97-G:** Quality Control Council of Canada (Applicant) v. Canspec Group Inc. (Eastern) (Positive Materials Identification) and Canspec Group Inc. (Eastern) (Chemical Analysis) (Respondent) v. Non-Destructive Testing Management Association ("NDTMA") (Intervener) (*Withdrawn*)

**1318-97-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Trnovac Ironworks Limited (Respondent) (*Withdrawn*)

**1493-97-G:** United Brotherhood of Carpenters and Joiners of America, Local 93, and United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. C. G. Kearney Construction Limited, C.G. Kearney Construction (Canada) Limited, and 1222171 Ontario Inc. (Respondents) (*Withdrawn*)

**1605-97-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. 715241 Ontario Limited c.o.b. as Hyde Park Concrete Company and Bozena Marie Mischczak (Respondents) (*Granted*)

**2154-97-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, and International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. The Electrical Power Systems Construction Association, Ontario Hydro (Respondents) (*Withdrawn*)

**2168-97-G:** Sheet Metal Workers' International Association, Local 473 (Applicant) v. Ontario Hydro, Bruce Nuclear Power Development (Respondents) (*Withdrawn*)

**2224-97-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 67 (Applicant) v. Calorific Construction Ltd. (Respondent) (*Endorsed Settlement*)

**2299-97-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 527 (Applicant) v. Ken Acton Plumbing & Heating Inc. (Respondent) (*Granted*)

**2356-97-G:** International Brotherhood of Painters & Allied Trades, Glaziers Local 1819 (Applicant) v. Top Glass & Mirror Inc. (Respondent) (*Granted*)

**2509-97-G:** International Association of Bridge, Structural Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. T.P. Erection Company Ltd. (Respondent) (*Endorsed Settlement*)

**2528-97-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Elmroad Construction Co. Ltd. (Respondent) (*Granted*)

**2530-97-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Elmford Construction Co. Ltd. (Respondent) (*Granted*)

**2567-97-G:** Marble, Tile, Terrazzo, Cement Masons, Resilient Floor Layers, Local 31 (Applicant) v. Toronto Tile & Granite Ltd. and Global Tile Inc. (Respondents) (*Granted*)

**2613-97-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Pro-Concrete Forming Inc./1158419 Ontario Inc. (Respondents) (*Endorsed Settlement*)

**2637-97-G:** Ontario Pipe Trades Council and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Applicant) v. K & S Plumbing & Heating Limited (Respondent) (*Endorsed Settlement*)

**2679-97-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Aloia Brothers Concrete Contractors Ltd. (Respondent) (*Endorsed Settlement*)

**2783-97-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 552 (Applicant) v. The State Group Limited (Respondent) (*Withdrawn*)

**2787-97-G:** International Brotherhood of Painters & Allied Trades, Glaziers Local 1819 (Applicant) v. Service Glass & Mirror Ltd. (Respondent) (*Withdrawn*)



**2800-97-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. Triple M Services (Respondent) (*Granted*)

**2806-97-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 552 (Applicant) v. The State Group Limited (Respondent) (*Withdrawn*)

**2810-97-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Humberline Contracting Inc. (Respondent) (*Endorsed Settlement*)

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# **ONTARIO LABOUR RELATIONS BOARD REPORTS**

## **Annual Consolidated Index 1997**



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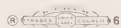
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EDITOR: RON LEBI

Selected decisions of particular reference value are  
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- Arbitration - Health and Safety - Union representing Crown employee filing complaint alleging unlawful reprisal contrary to Occupational Health and Safety Act (OHSA) and Smoking in the Workplace Act - Employer asserting that Labour Relations Board not having jurisdiction because employee had earlier elected to have subject matter of complaint heard by Grievance Settlement Board - Board not accepting union's submission that section 50(6) of OHSA gives Labour Relations Board exclusive jurisdiction where the complainant is a Crown employee - Board accepting employer's submission regarding effect of employee's election - Application dismissed
- CROWN IN RIGHT OF ONTARIO (MINISTRY OF THE SOLICITOR GENERAL AND CORRECTIONAL SERVICES), THE AND I. HADDEN, A. DVORAK, R. LUNDY; RE OPSEU, BILL WALLS .....(July/August) 562
- Bargaining Rights - Bargaining Unit - Duty to Bargain in Good Faith - Unfair Labour Practice - Board finding Health Unit employer in violation of its duty to bargain in good faith by bargaining to impasse the issue of proposed changes to the bargaining unit description, and by refusing to remove its proposal from the negotiating table when the parties were in a strike/lock-out position - Board directing employer to cease insisting on its bargaining unit proposal and to meet with union with 2 weeks to bargain in good faith and make every reasonable effort to effect a collective agreement
- HALIBURTON, KAWARTHA, PINE RIDGE DISTRICT HEALTH UNIT; RE CUPE LOCAL 1602 .....(Sept./Oct.) 857

- Bargaining Rights - Bargaining Unit - Sale of a Business - CUPE representing comprehensive 'service bargaining unit' (including paramedical employees and registered practical nurses) at General Hospital - Steelworkers' union, Practical Nurses Federation and AAHP:O representing employees in separate bargaining units of service workers, registered practical nurses and paramedical employees at Civic Hospital- Parties agreeing that closure of Civic Hospital and transfer of its operations to General Hospital amounting to sale of a business - Parties also agreeing that Board's jurisdiction under section 69(6) triggered and that Board should determine appropriate bargaining structure under that section - Board directing that appropriate bargaining unit structure is one at place at General Hospital and that vote be held in which CUPE, Steelworkers' union, AAHP:O and Practical Nurses Federation be entitled to have their names on the ballot
- PEMBROKE GENERAL HOSPITAL, THE USWA, THE PRACTICAL NURSES FEDERATION OF ONTARIO, THE ASSOCIATION OF ALLIED HEALTH PROFESSIONALS: ONTARIO, THE ONA, AND THE CUPE AND ITS LOCAL 1502; RE PEMBROKE CIVIC HOSPITAL ..... (Sept./Oct.) 918
- Bargaining Rights - Certification - Bargaining Unit - Union and employer disputing how employer should be named in bargaining unit description - Employer seeking to exclude its "construction division" - Union seeking bargaining unit described as all employees of corporate employer without exclusion - Board finding no cogent reason to restrict bargaining rights as proposed by employer - Certificate issuing
- KPM INDUSTRIES LTD.; RE USWA ..... (Sept./Oct.) 881
- Bargaining Rights - Certification - Construction Industry - UA and Labourers' union seeking to represent members of their trades employed by Ontario Hydro in ICI sector - Board not accepting employer's assertion that relevant employees already represented by applicants under Electrical Powers Systems Construction Association collective agreements
- ONTARIO HYDRO; RE UA, LOCAL 527; RE POWER WORKERS' UNION, CUPE LOCAL 1000; RE LIUNA, LOCAL 1059; RE EPSCA ..... (July/August) 659
- Bargaining Rights - Collective Agreement - Sale of a Business - Union making sale of a business application and alleging that "MTI" is a successor to "E" - Board ruling that collective agreement relied on by union to establish broader bargaining rights was made in contravention of the Act and, therefore, may not be relied on - Collective agreement relied on by union involving early termination of earlier collective agreement without consent of the Board or, alternatively, amendment of collective agreement extending its term of operation - Neither result permitted under the Act - Board concluding that scope of union's bargaining rights did not include location in Elora, Ontario - Application dismissed
- MINING TECHNOLOGIES INTERNATIONAL INC.; RE USWA ..... (May/June) 482
- Bargaining Rights - Conciliation - Sale of a Business - Reference - Union representing bargaining unit of building cleaners employed by landlord - Bill 40 deeming subsequent contracting out to cleaning contractor to be sale of a business - Union giving notice to bargain to landlord and applying for conciliation - Landlord objecting to appointment of conciliation officer on ground that union no longer having bargaining rights as against it - Board finding that deemed sale of a business did not terminate union's bargaining rights with landlord or wipe out its collective agreement - Board advising Minister that she has authority to make requested appointment of conciliation officer
- CADILLAC FAIRVIEW CORPORATION LIMITED, THE ("CADILLAC FAIRVIEW") AND OAKDALE CLEANERS & MAINTENANCE LIMITED ("OAKDALE"); RE LIUNA, LOCAL 1059 ("THE UNION") ..... (Mar./Apr.) 187
- Bargaining Unit - Bargaining Rights - Duty to Bargain in Good Faith - Unfair Labour Practice - Board finding Health Unit employer in violation of its duty to bargain in good faith by bargaining to impasse the issue of proposed changes to the bargaining unit description, and by

refusing to remove its proposal from the negotiating table when the parties were in a strike/lock-out position - Board directing employer to cease insisting on its bargaining unit proposal and to meet with union with 2 weeks to bargain in good faith and make every reasonable effort to effect a collective agreement

HALIBURTON, KAWARTHA, PINE RIDGE DISTRICT HEALTH UNIT; RE CUPE LOCAL 1602 ..... (Sept./Oct.) 857

Bargaining Unit - Bargaining Rights - Sale of a Business - CUPE representing comprehensive "service bargaining unit" (including paramedical employees and registered practical nurses) at General Hospital - Steelworkers' union, Practical Nurses Federation and AAHP:O representing employees in separate bargaining units of service workers, registered practical nurses and paramedical employees at Civic Hospital- Parties agreeing that closure of Civic Hospital and transfer of its operations to General Hospital amounting to sale of a business - Parties also agreeing that Board's jurisdiction under section 69(6) triggered and that Board should determine appropriate bargaining structure under that section - Board directing that appropriate bargaining unit structure is one at place at General Hospital and that vote be held in which CUPE, Steelworkers' union, AAHP:O and Practical Nurses Federation be entitled to have their names on the ballot

PEMBROKE GENERAL HOSPITAL, THE USWA, THE PRACTICAL NURSES FEDERATION OF ONTARIO, THE ASSOCIATION OF ALLIED HEALTH PROFESSIONALS: ONTARIO, THE ONA, AND THE CUPE AND ITS LOCAL 1502; RE PEMBROKE CIVIC HOSPITAL ..... (Sept./Oct.) 918

Bargaining Unit - Certification - Bargaining Rights - Union and employer disputing how employer should be named in bargaining unit description - Employer seeking to exclude its "construction division" - Union seeking bargaining unit described as all employees of corporate employer without exclusion - Board finding no cogent reason to restrict bargaining rights as proposed by employer - Certificate issuing

KPM INDUSTRIES LTD.; RE USWA ..... (Sept./Oct.) 881

Bargaining Unit - Certification - Construction Industry - Practice and Procedure - Millwrights' union and Plumbers' union seeking to represent certain construction employees of multi-plant employer - Steelworkers' union and Machinists' union already representing certain employees of employer in certain locations, including employees doing certain construction work - Board describing appropriate bargaining units in certification applications as excluding construction employees already represented by Steelworkers' union and Machinists' union - Employer submitting that Plumbers' union should be estopped from applying for certification because of union's alleged misrepresentation to employer regarding the union's intentions to obtain bargaining rights - Employer's allegations dismissed for failure to make out prima facie case

ALCAN ALUMINIUM LIMITED; RE MILLWRIGHT LOCAL 1410 ("MILLWRIGHTS"); RE ALCAN CHEMICALS, DIVISION OF ALCAN ALUMINIUM LIMITED ("CHEMICAL"); ALCAN ROLLED PRODUCTS ("ROLLED PRODUCTS"); ALCAN CABLE ("CABLE"); ALCAN FOIL PRODUCTS ("FOIL"); USWA, LOCAL 7949 AND LOCAL 8754 ("STEELWORKERS"); IAM, LODGE 54 ("MACHINISTS")..... (May/June) 305

Bargaining Unit - Certification - Employer - Practice and Procedure - Prior to holding of representation vote, employer taking position that certain disputed individuals ought to be included in bargaining unit and union taking position that such individuals ought to be excluded - After ballots (including those of disputed individuals) cast and counted, both union and employer changing positions and purporting to adopt position formerly advanced by the other - Employer subsequently asking Board to direct new vote and to find that two bargaining units (one excluding the disputed individuals and one composed exclusively of the disputed individuals) appropriate - Employer asserting that another entity employing the disputed individuals - Board declining to direct second vote - Board finding disputed individuals to be employed by the



employer and not by the other entity - Board also finding that, in the circumstances, employer ought not to be permitted to raise new bargaining issue at this stage of proceedings - Board, in any event, not persuaded that applicant's proposed bargaining unit not appropriate - Certificate issuing

MARTHA'S GARDEN INC.; RE TEAMSTERS LOCAL UNION NO. 419 ..... (Sept./Oct.) 891

Bargaining Unit - Certification - Reconsideration - Representation Vote - Union applying to represent bargaining unit of part-time and casual nurses employed by hospital - Board earlier directing that vote be held on fifth day after application was filed - Vote held on Friday before long week-end - Board rejecting employer's submission that employees had insufficient notice of the vote and insufficient access to the voting itself - Request to reconsider earlier decision ordering vote dismissed - Union describing appropriate bargaining unit as including all part-time and casual nurses "employed in a nursing capacity" - Employer submitting that bargaining unit should mirror existing full-time unit and so should be limited to those "engaged in nursing care" - Board concluding that part-time unit that would include nurses not involved in direct nursing care would cause employer labour relations problems of a substantial nature - Board accepting employer's bargaining unit description as appropriate - Final certificate issuing

MOUNT SINAI HOSPITAL; RE ONA ..... (July/August) 651

Bargaining Unit - Certification - Representation Vote - Board directing representation vote in voting constituency mirroring bargaining unit proposed by union and agreed to by employer - On eve of taking of representation vote, employer writing to Board to assert that union's proposed bargaining unit not appropriate - Board not permitting employer to approbate and reprobate at same time - Board holding employer to its agreement to union's proposed bargaining unit and finding agreed-upon bargaining unit appropriate - Certificate issuing

CHEDOKE-MCMASTER HOSPITALS; RE IUOE, LOCAL 772 ..... (Jan./Feb.) 35

Bargaining Unit - Nursing home employer applying under Bill 7 transition provisions for order "de-combining" bargaining unit including full-time and part-time employees - Board finding substantial community of interest between full-time and part-time employees - Application dismissed

COLLINGWOOD NURSING HOME LTD.; RE HEALTH, OFFICE AND PROFESSIONAL EMPLOYEES, A DIVISION OF UFCW, LOCAL 175 ..... (Sept./Oct.) 824

Bargaining Units - Combination of Bargaining Units - Employer applying under Bill 7 transitional provisions to "de-combine" bargaining unit of full-time and part-time employees - Board finding that Bill 7's reference to "community of interest" is meant to invoke Board's traditional approach to the concept and not its more modern version as expressed in *Hospital for Sick Children* case - Board applying traditional approach and finding that existing bargaining unit not appropriate

MARRIOTT CORPORATION OF CANADA LTD. (AT CARLETON UNIVERSITY); RE CUPE AND ITS LOCAL 2451 ..... (May/June) 468

Build-Up - Certification - 52 of 86 ballots counted in representation vote cast in favour of union representation - Employer asking Board to apply build-up principle and to hold new vote 8 weeks later when number of actual employment positions will have increased by 53% - Board accepting union's calculation of potential build-up as no more than 41% - Board seeing no reason to order second vote - Certificate issuing

PET-PAK CONTAINERS, 95467 ONTARIO LTD. C.O.B. AS; RE CUOE ..... (May/June) 520

Build-Up - Certification - Representation Vote - Employer's response to certification application asserting that workforce about to increase and that representation vote should be postponed -

Board directing taking of representation vote and indicating that “build-up” issue may be raised by employer at hearing after vote if necessary

PET-PAK CONTAINERS; RE THE CANADIAN UNION OF OPERATING ENGINEERS AND GENERAL WORKERS ..... (Mar./Apr.) 249

Certification - Bargaining Rights - Bargaining Unit - Union and employer disputing how employer should be named in bargaining unit description - Employer seeking to exclude its “construction division” - Union seeking bargaining unit described as all employees of corporate employer without exclusion - Board finding no cogent reason to restrict bargaining rights as proposed by employer - Certificate issuing

KPM INDUSTRIES LTD.; RE USWA ..... (Sept./Oct.) 881

Certification - Bargaining Rights - Construction Industry - UA and Labourers’ union seeking to represent members of their trades employed by Ontario Hydro in ICI sector - Board not accepting employer’s assertion that relevant employees already represented by applicants under Electrical Powers Systems Construction Association collective agreements

ONTARIO HYDRO; RE UA, LOCAL 527; RE POWER WORKERS’ UNION, CUPE LOCAL 1000; RE LIUNA, LOCAL 1059; RE EPSCA..... (July/August) 659

Certification - Bargaining Unit - Construction Industry - Practice and Procedure - Millwrights’ union and Plumbers’ union seeking to represent certain construction employees of multi-plant employer - Steelworkers’ union and Machinists’ union already representing certain employees of employer in certain locations, including employees doing certain construction work - Board describing appropriate bargaining units in certification applications as excluding construction employees already represented by Steelworkers’ union and Machinists’ union - Employer submitting that Plumbers’ union should be estopped from applying for certification because of union’s alleged misrepresentation to employer regarding the union’s intentions to obtain bargaining rights - Employer’s allegations dismissed for failure to make out prima facie case

ALCAN ALUMINIUM LIMITED; RE MILLWRIGHT LOCAL 1410 (“MILLWRIGHTS”); RE ALCAN CHEMICALS, DIVISION OF ALCAN ALUMINIUM LIMITED (“CHEMICAL”); ALCAN ROLLED PRODUCTS (“ROLLED PRODUCTS”); ALCAN CABLE (“CABLE”); ALCAN FOIL PRODUCTS (“FOIL”); USWA, LOCAL 7949 AND LOCAL 8754 (“STEELWORKERS”); IAM, LODGE 54 (“MACHINISTS”)..... (May/June) 305

Certification - Bargaining Unit - Employer - Practice and Procedure - Prior to holding of representation vote, employer taking position that certain disputed individuals ought to be included in bargaining unit and union taking position that such individuals ought to be excluded - After ballots (including those of disputed individuals) cast and counted, both union and employer changing positions and purporting to adopt position formerly advanced by the other - Employer subsequently asking Board to direct new vote and to find that two bargaining units (one excluding the disputed individuals and one composed exclusively of the disputed individuals) appropriate - Employer asserting that another entity employing the disputed individuals - Board declining to direct second vote - Board finding disputed individuals to be employed by the employer and not by the other entity - Board also finding that, in the circumstances, employer ought not to be permitted to raise new bargaining issue at this stage of proceedings - Board, in any event, not persuaded that applicant’s proposed bargaining unit not appropriate - Certificate issuing

MARTHA’S GARDEN INC.; RE TEAMSTERS LOCAL UNION NO. 419 ..... (Sept./Oct.) 891

Certification - Bargaining Unit - Reconsideration - Representation Vote - Union applying to represent bargaining unit of part-time and casual nurses employed by hospital - Board earlier directing that vote be held on fifth day after application was filed - Vote held on Friday before long week-end - Board rejecting employer’s submission that employees had insufficient notice of the vote and insufficient access to the voting itself - Request to reconsider earlier decision

ordering vote dismissed - Union describing appropriate bargaining unit as including all part-time and casual nurses "employed in a nursing capacity" - Employer submitting that bargaining unit should mirror existing full-time unit and so should be limited to those "engaged in nursing care" - Board concluding that part-time unit that would include nurses not involved in direct nursing care would cause employer labour relations problems of a substantial nature - Board accepting employer's bargaining unit description as appropriate - Final certificate issuing

MOUNT SINAI HOSPITAL; RE ONA .....(July/August) 651

Certification - Bargaining Unit - Representation Vote - Board directing representation vote in voting constituency mirroring bargaining unit proposed by union and agreed to by employer - On eve of taking of representation vote, employer writing to Board to assert that union's proposed bargaining unit not appropriate - Board not permitting employer to approbate and reprobate at same time - Board holding employer to its agreement to union's proposed bargaining unit and finding agreed-upon bargaining unit appropriate - Certificate issuing

CHEDOKE-MCMMASTER HOSPITALS; RE IUOE, LOCAL 772 ..... (Jan./Feb.) 35

Certification - Board earlier barring CAW-Canada under section 10(3) of the Act from re-applying for certification for one year following unsuccessful application - Ten months later, UAW and local of CAW-Canada applying for certification (on same day) - Board directing single representation vote - Significant majority of ballots cast in favour of CAW-Canada local, but employer asking Board to dismiss application - Board not accepting employer's argument that automatic statutory bar against CAW-Canada under section 10(3) of the Act applying to local of CAW-Canada - Board analyzing nature and purpose of its discretion under section 111(2)(k) of the Act to refuse to entertain a subsequent certification application and Board elaborating some factors to guide that discretion - Applying those factors, Board seeing no reason to refuse to give effect to results of representation vote in this case - Certificate issuing

TITAN TOOL & DIE LIMITED; RE UAW; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) LOCAL 195 ..... (Mar./Apr.) 281

Certification - Build-Up - 52 of 86 ballots counted in representation vote cast in favour of union representation - Employer asking Board to apply build-up principle and to hold new vote 8 weeks later when number of actual employment positions will have increased by 53% - Board accepting union's calculation of potential build-up as no more than 41% - Board seeing no reason to order second vote - Certificate issuing

PET-PAK CONTAINERS, 95467 ONTARIO LTD. C.O.B. AS; RE CUOE ..... (May/June) 520

Certification - Build-Up - Representation Vote - Employer's response to certification application asserting that workforce about to increase and that representation vote should be postponed - Board directing taking of representation vote and indicating that "build-up" issue may be raised by employer at hearing after vote if necessary

PET-PAK CONTAINERS; RE THE CANADIAN UNION OF OPERATING ENGINEERS AND GENERAL WORKERS ..... (Mar./Apr.) 249

Certification - Certification Where Act Contravened - Charter of Rights - Constitutional Law - Judicial Review - Representation Vote - Board concluding that conduct of employer in circulating amongst employees and engaging them in individual and group discussions regarding the union violating section 70 of the Act - Employer's refusal to answer questions regarding closing of store if union certified amounting to intentionally generated implied threat to employees' job security and also violating the Act - Board concluding that results of representation vote not disclosing employees' true wishes, that no remedy short of automatic certification sufficient to counter effect of employer contraventions, and that union holding membership support sufficient for collective bargaining - Union certified under section 11 of the Act - Applications for



judicial review brought by employer and by objecting employees dismissed by Divisional Court

WAL-MART CANADA INC.; RE USWA AND THE OLRB; RE TIZIANI ALFINI ET AL.;  
RE OLRB, JANICE JOHNSTON, VICE-CHAIR, H. PEACOCK, BOARD MEMBER R.W.  
PIRRIE, BOARD MEMBER AND USWA .....(July/August) 810

Certification - Certification Where Act Contravened - Charter of Rights - Constitutional Law - Judicial Review - Representation Vote - Board concluding that conduct of employer in circulating amongst employees and engaging them in individual and group discussions regarding the union violating section 70 of the Act - Employer's refusal to answer questions regarding closing of store if union certified amounting to intentionally generated implied threat to employees' job security and also violating the Act - Board concluding that results of representation vote not disclosing employees' true wishes, that no remedy short of automatic certification sufficient to counter effect of employer contraventions, and that union holding membership support sufficient for collective bargaining - Union certified under section 11 of the Act - Applications for judicial review brought by employer and by objecting employees dismissed by Divisional Court - Application for leave to appeal dismissed by Court of Appeal

WAL-MART CANADA INC.; RE USWA AND THE ONTARIO LABOUR RELATIONS  
BOARD .....(Sept./Oct.) 963

Certification - Certification Where Act Contravened - Construction Industry - Discharge - Discharge for Union Activity - Intimidation and Coercion - Remedies - Unfair Labour Practice - Board finding lay-off of union supporter improperly motivated and unlawful - Board finding that certain statements of employer reasonably perceived as threats to employment - Board issuing cease and desist order and directing that damages be paid to discharged employee - Board also certifying union under section 11 of the Act

MARSIL MECHANICAL INC. ("MARSIL"); RE ONTARIO PIPE TRADES COUNCIL  
OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE  
PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA  
("O.P.C.") AND THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES  
OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND  
CANADA ("U.A.") .....(Sept./Oct.) 900

Certification - Certification Where Act Contravened - Construction Industry - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board finding that employer violated the Act when it discharged union's two key supporters - Board finding membership support adequate for collective bargaining where union had signed up 2 employees out of 10 in bargaining unit and where union applying for ICI bargaining rights - Board finding that other requirements under section 11(1) also satisfied - Certificates issuing - Board also directing reinstatement and compensation for infringement of statutory rights, even if offer of reinstatement declined and even if the discharged employees were otherwise employed through entire period - Board also declaring that union entitled to conduct two meetings with employees during working hours, in the absence of the employer

PIETRO ELECTRIC LIMITED; RE IBEW CONSTRUCTION COUNCIL OF ONTARIO,  
AND IBEW LOCAL 773 .....(May/June) 527

Certification - Certification Where Act Contravened - Construction Industry - Evidence - Intimidation and Coercion - Practice and Procedure - Remedies - Representation Vote - Union alleging that employer making certain threats and that union should be certified under section 11 of the Act - Employer asking Board to entertain subjective testimony of employees regarding whether they felt able to vote freely and whether their own votes reflected their true wishes regarding union representation - Board ruling that proffered evidence not relevant and inadmissible - Board finding that employer's sharing of its "economic analysis" with its employees was not a legitimate exercise of free speech, but designed to intimidate and coerce employees - Board

- finding that four statutory pre-conditions to certification under section 11 of the Act met -  
Certificates issuing
- JAK ELECTRICAL CONTRACTORS LIMITED; RE IBEW, LOCAL 353 .....(July/August) 578
- Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity -  
Interference in Trade Unions - Intimidation and Coercion - Remedies - Unfair Labour Practice -  
Employer threatening to shut plant and move to United States if union certified - Board  
certifying union under section 11 of the Act - Board directing reinstatement of inside union  
organizer who resigned position because he thought that he would be dismissed following  
union's loss in representation vote
- TILL-FAB LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND  
GENERAL WORKERS' UNION OF CANADA (CAW) .....(Nov./Dec.) 1047
- Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity -  
Interference in Trade Unions - Judicial Review - Unfair Labour Practice - Board finding that  
employer violated the Act in promoting an employee association in the face of the union  
organizing campaign and in indefinitely suspending the lead inside union organizer - Board  
certifying union under section 11(1) of the Act - Application for judicial review dismissed by  
Divisional Court
- BURLINGTON GOLF & COUNTRY CLUB LIMITED; RE CANADIAN UNION OF OP-  
ERATING ENGINEERS AND GENERAL WORKERS AND THE OLRB.....(Mar./Apr.) 299
- Certification - Certification Where Act Contravened - Representation Vote - Board concluding that  
conduct of employer in circulating amongst employees and engaging them in individual and  
group discussions regarding the union violating section 70 of the Act - Employer's refusal to  
answer questions regarding closing of store if union certified amounting to intentionally  
generated implied threat to employees' job security and also violating the Act - Board conclud-  
ing that results of representation vote not disclosing employees' true wishes, that no remedy  
short of automatic certification sufficient to counter effect of employer contraventions, and that  
union holding membership support sufficient for collective bargaining - Union certified under  
section 11 of the Act
- WAL-MART CANADA, INC.; RE USWA ..... (Jan./Feb.) 141
- Certification - Change in Working Conditions - Representation Vote - Unfair Labour Practice - Union  
alleging that video tape and letter sent by employer to each employee's home on eve of  
representation vote contained material misrepresentations regarding statutory freeze and threats  
to employment - Union asking that second vote be ordered - Board rejecting union's allega-  
tions - Application for certification and unfair labour practice complaints dismissed
- KRAFT CANADA INC.; RE UFCW, LOCAL 175.....(Mar./Apr.) 239
- Certification - Charges - Representation Vote - Unfair Labour Practice - Canadian Health Care  
Workers (CHCW) applying to displace Service Workers' Union Local 220 as bargaining agent  
for certain hospital workers - Board finding that allegations made by CHCW concerning  
conduct of Local 220 and employer could not, even if true, support finding of breach of the Act  
or undermine results of representation vote - Applications dismissed
- GRAND RIVER HOSPITAL CORPORATION; RE CANADIAN HEALTH CARE WORK-  
ERS (C.H.C.W.); RE LONDON & DISTRICT SERVICE WORKERS' UNION, LOCAL 220  
.....(Sept./Oct.) 855
- Certification - Constitutional Law - Charter of Rights and Freedoms - Fraud - Employer asserting that  
certificate ought not to issue, despite union having won representation vote, because union  
allegedly knowingly misrepresented number of employees in proposed bargaining unit so as to  
put union in vote position - Employer arguing that misrepresentation amounting to fraud -  
Union submitting that section 64 of the Act not applying because no certificate yet obtained

and that employer not making out prima facie case of fraud- Board declaring that union entitled to certificate - Board rejecting submission that union required to exercise due diligence in providing Board with estimate of number of employees in unit, but listing matter for hearing on issue of whether certificate obtained by fraud - Board also rejecting submission that Charter rights denied because notices and ballots provided only in English and French and not in other languages of workplace

R-THETA INC.; RE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AERO-SPACE WORKERS..... (Jan./Feb.) 116

Certification - Constitutional Law - Practice and Procedure - Timeliness - Employer and incumbent union responding to union's certification application and asserting that application untimely - Employer also asserting that its labour relations governed by Canada Labour Code - Applicant and incumbent union directed to file submissions within two days on constitutional issue, including submissions on how Board should deal with the application given the issue

STERLING MARINE FUELS, A DIVISION OF MCASPHALT INDUSTRIES LTD.; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION LOCAL NO. 880; RE IUOE, LOCAL 793 ..... (Mar./Apr.) 280

Certification - Construction Industry - Employee - IBEW applying to represent bargaining unit of electricians - Board determining that individuals holding "Pending Provisional C of Q" certificate from Ministry of Education who were at work of the date of application doing bargaining unit work eligible to vote in representation vote

SPEED ELECTRIC LIMITED; RE IBEW, LOCAL 353 ..... (Jan./Feb.) 138

Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application for judicial review brought by objecting individual dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED, ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER ..... (Mar./Apr.) 298

Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore



deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application to have judicial review application heard by single judge on grounds of urgency and motion to stay decision of the Board dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED;  
MICHAEL BAUER RE OLRB, IBEW, LOCAL 353..... (Jan./Feb.)

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Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Objecting individual seeking judicial review and filing three affidavits in support of application - Motions' court judge holding affidavits inadmissible and ordering them struck out

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED,  
ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER.....(Mar./Apr.)

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Certification - Construction Industry - Employee - UA applying to represent bargaining units of plumbers and steamfitters and their apprentices - UA disputing entitlement to vote of individual allegedly not properly working under Trades Qualification and Apprenticeship Act - Board holding that disputed individual should be considered employed in bargaining unit, notwithstanding that he was neither an apprentice nor a journeyman plumber or steamfitter at the time the application was made, but where he had spent a majority of his time on the application date working in the trade and he had been working or employed in the trade for not more than three months - Board finding that owner's brother not exercising managerial functions and that his ballot cast in representation vote should be counted

MARSIL MECHANICAL INC.; RE ONTARIO PIPE TRADES COUNCIL OF UA

.....(July/August)

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Certification - Construction Industry - Employer - Board finding that employees affected by application for certification employed by respondent and not by personnel agency

ESSO IMPERIAL OIL LIMITED ("ESSO"), 533670 ONTARIO LIMITED C.O.B. AS BEST  
PERSONNEL SERVICES ("BEST") AND; LIUNA, LOCAL 1089 (THE "LABOURERS")

.....(Sept./Oct.)

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Certification - Construction Industry - Employer - Millwrights' union and Plumbers' union applying to represent bargaining units of millwrights and plumbers in ICI sector - Board rejecting

argument that “division” of corporate legal entity, rather than corporate legal entity itself, acting as “employer” for labour relations purposes

ALCAN ALUMINIUM LIMITED; RE MILLWRIGHT DISTRICT COUNCIL OF ONTARIO AND ITS LOCAL 1410; RE ALCAN CHEMICALS, DIVISION OF ALCAN ALUMINIUM LIMITED (“CHEMICALS”); ALCAN ROLLED PRODUCTS (“ROLLED PRODUCTS”); ALCAN CABLE (“CABLE”); ALCAN FOIL PRODUCTS (“FOIL”); USWA, LOCAL 7949 AND LOCAL 8754; IAM, LODGE 54.....(Mar./Apr.)

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Certification - Construction Industry - Evidence - Membership Evidence - Parties - Practice and Procedure - Representation Vote - IBEW Local 1687 applying to represent certain construction electricians employed by Ontario Hydro - Board earlier conducting pre-hearing representation vote and sealing box - Board concluding that PWU has no standing to participate further in proceeding as of right and that there is no reason to grant standing in exercise of Board’s discretion - Board not satisfied that membership evidence filed by PWU conferring sufficient representational authority to permit PWU to participate in IBEW application - Board not persuaded that PWU can be permitted to rely on its collective agreement with Ontario Hydro as basis for standing - Board finding no justification to give PWU amicus curiae status - Board also deciding against opening sealed ballot box and counting ballots - Board directing hearing with respect to remaining outstanding issues

ONTARIO HYDRO; RE IBEW, LOCAL 1687; RE POWER WORKERS’ UNION, CUPE LOCAL 1000 (PWU), IBEW, LOCAL 1788, EPSCA, THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO (ECAO); RE GROUP OF EMPLOYEES .....(July/August)

700

Certification - Construction Industry - Judicial Review - Reconsideration - Trade Union - Power Workers’ Union (PWU) seeking to displace International Brotherhood of Electrical Workers (IBEW) in several bargaining units - Board concluding that PWU not a construction “trade union” within meaning of section 126 of the Act and therefore not entitled to bring its certification applications - Applications for certification and request for reconsideration dismissed - PWU applying for judicial review - Motions Court judging striking out portion of affidavit and factum filed by PWU

ONTARIO HYDRO, G.T. SURDYKOWSKI, OLRB, IBEW, LOCAL 1788, IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO, IBEW, LOCAL 105, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, THE IBEW CONSTRUCTION COUNCIL OF ONTARIO, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1687, ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION AND ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO; RE PWU, CUPE, LOCAL 1000.....(Nov./Dec.)

1066

Certification - Construction Industry - Reconsideration - Trade Union - Power Workers’ Union (PWU) seeking to displace International Brotherhood of Electrical Workers (IBEW) in several bargaining units - Board concluding that PWU not a construction “trade union” within meaning of section 126 of the Act and therefore not entitled to bring its certification applications - Applications for certification and request for reconsideration dismissed

ONTARIO HYDRO; THE POWER WORKERS’ UNION, CUPE LOCAL 1000 (“PWU”); RE THE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION (EPSCA), THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO (ECAO), INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1788 (IBEW 1788), THE IBEW CONSTRUCTION COUNCIL OF ONTARIO (IBEW CCO), INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1687 (IBEW 1687).... (Jan./Feb.)

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Certification - Construction Industry - Reconsideration - Union applying for reconsideration of decision dismissing certification application and imposing one year “bar” on new applications - Board dismissing union’s certification application after finding that bargaining unit included

only one employee - Union arguing that mandatory "bar" not applying in the circumstances - Reconsideration application dismissed	
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Certification - Construction Industry - Union seeking to represent construction labourers employed by landscape contractor - Board not accepting submission that employer (and employees) engaged in horticulture and that the Act accordingly does not apply pursuant to section 3(c) of the Act	
WILCO LANDSCAPE CONTRACTORS LTD.; RE LIUNA, LOCAL 607 ..... (Nov./Dec.)	1053
Certification - Employee - Evidence - Membership Evidence - Reconsideration - Representation Vote - Trade Union Status - Board finding that locals of UNITE and UNITE's Ontario District Council are inter-related organizations each of which has status of a trade union within the meaning of the Act - Employer and objecting employees asking Board to dismiss application on grounds that application filed by District Council was accompanied by evidence of membership in International union - Board seeing no reason to overturn evidence of earlier finding regarding 40 percent "appearance" of support in applicant - Board allowing union to challenge employment status of two individuals for first time after the vote where their status was already in issue for other reasons and their ballots were already segregated	
BLACK PHOTO CORPORATION; UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES ONTARIO DISTRICT COUNCIL; RE GROUP OF EMPLOYEES ..... (May/June)	347
Certification - Employee - Judicial Review - Board finding that thirteen lead hands employed at employer's production facility exercising managerial functions and not "employees" for purposes of the Act - Certificate issuing - Application for judicial review dismissed by Divisional Court	
GOURMET BAKER INC.; RE USWA AND THE OLRB..... (Mar./Apr.)	171
Certification - Evidence - Judicial Review - Practice and Procedure - Union winning representation vote but employer asserting that certificate should not issue - Employer submitting that Board mistakenly determined that there was appearance of more than 40% union support and that vote should not have been directed - Board rejecting employer's argument and affirming its practice under Bill 7 of looking only at information provided by union with its application when determining existence of appearance of 40% support - Board also explaining its inclination, where possible, to count ballots so that "quick votes" under Bill 7 are followed by quick results - Certificate issuing - Application for judicial review dismissed by Divisional Court	
CORPORATION OF THE CITY OF TORONTO, THE; RE CUPE, LOCAL 79 AND THE OLRB, AND R.O. MACDOWELL, CHAIR; AND H. PEACOCK, BOARD MEMBER; AND J.A. RUNDLE, BOARD MEMBER ..... (Jan./Feb.)	169
Certification - Evidence - Membership Evidence - Board holding that it may properly have regard to membership evidence in the form of combination cards which were signed between six months and one year prior to application date - Board directing representation vote	
SUDBURY AND DISTRICT HEALTH UNIT; RE CUPE..... (Jan./Feb.)	139
Certification - Evidence - Practice and Procedure - Security Guards - Employer objecting to certification application brought by Steelworkers' union on ground that union admits to membership persons who are not guards - Statute requiring trade union to satisfy Board that no conflict of interest would result - Board concluding that rational and efficient conduct of proceedings make it appropriate for employer to call its evidence first	
BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE USWA; RE INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 1962 ..... (Jan./Feb.)	1



- Certification - Hospital Labour Disputes Arbitration Act - Timeliness - Canadian Health Care Workers seeking to displace London & District Service Workers Union, Local 220 as bargaining agent for certain employees - Most recent collective agreement between employer and incumbent union expired in 1992 - Board of Arbitration issuing award covering January 1, 1993 to December 31, 1994 period in January 1997 - Award dated November 1996 - Award remitting lay-off issue to parties for further negotiation and Board of Arbitration remaining seized - Whether certification application timely under provisions of HLDA - Board finding that award not deciding matters in dispute and that 90 day extension under subsection 10(12) of HLDA not yet triggered - Certification application dismissed as premature and untimely
- CORPORATION OF THE CITY OF ST. THOMAS, THE; RE CANADIAN HEALTH CARE WORKERS; RE LONDON & DISTRICT SERVICE WORKERS' UNION, LOCAL 220 ..... (May/June) 373
- Certification - Hospital Labour Disputes Arbitration Act - Timeliness - Incumbent union and employer subject to provisions of Hospital Labour Disputes Arbitration Act - Raiding union filing certification application almost two years after expiry of most recent collective agreement, 19 months after appointment of conciliation officer and 17 months after Minister of Labour advising employer and incumbent union that conciliation officer had reported that the parties had been unable to effect collective agreement - Application dismissed as untimely
- TRINITY VILLAGE CARE CENTER; RE CANADIAN HEALTH CARE WORKERS (C.H.C.W.); RE LONDON & DISTRICT SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C. .... (Mar./Apr.) 296
- Certification - IATSE applying to represent bargaining unit of stagehands employed at Molson Amphitheatre at Ontario Place - Application made during off-season when theatre closed - Board applying TheatreCorp decision and concluding that in theatrical industry only those persons working on the application filing date should be eligible to vote - Application dismissed
- CROCODILE LABOUR SERVICES INC., MCA CONCERTS CANADA; RE IATSE, LOCAL 58, TORONTO AND T.C. SCLOCCO; RE VICTORIA M. DESROCHES..... (Sept./Oct.) 832
- Certification - Membership Evidence - Practice and Procedure - Employer asking Board not to give effect to representation vote because no vote ought to have been ordered in the first place - Board affirming approach to determining "appearance" of 40 percent support described in *City of Toronto* case - In making that determination, Board to have regard only to membership evidence filed by union and to its estimate of the number of persons in its proposed bargaining unit - Certificate issuing
- HERCULES MOLDED PRODUCTS INC.; RE UFCW, AFL-CIO-CLC ..... (Sept./Oct.) 866
- Certification - Practice and Procedure - Representation Vote - Security Guards - Applicant union's earlier certification application withdrawn prior to representation vote - Union filing new application for different, but overlapping bargaining unit - Employer and intervening union asserting that new application should be barred - Board ordering vote and directing that "bar" issue be dealt with at hearing after the vote, if necessary - Applicant asking Board to order employer to provide it with names and addresses of all bargaining unit employees - Applicant's request denied - Board directing employer to mail copies of Board's decision and Notice of Vote to all individuals in voting constituency
- NORTH AMERICAN SECURITY SERVICES INC.; RE USWA; RE CANADIAN UNION OF PROFESSIONAL SECURITY-GUARDS ..... (July/August) 657
- Certification - Representation Vote - Employer asking Board to direct new vote on ground that two employees did not receive notice of the hours that the vote was held and were therefore deprived of opportunity to cast ballot - Employer submitting that the two employees believed that the polls would be open from 5:30 a.m. to 7:30 a.m. (on the basis that the employer had agreed with the union's proposal to have the vote during those hours) whereas the poll was

open only until 7:00 a.m. - Employer submitting that Notice of Vote setting out time of vote had been posted on morning of work day prior to the vote, but after the two employees had left the facility - Board finding that sufficient notice of the vote given and that employees who relied on parties' agreement regarding hours of the vote did so in disregard of Board's instructions set out in Notice of Application posted in workplace - Board not ordering new vote - Certificate issuing

SMALL FRY SNACK FOODS INC.; RE MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647..... (Jan./Feb.)

134

Certification - Representation Vote - Local of UFCW applying for certification - Employer asking for application to be dismissed without a hearing or a vote on ground that one-year bar in effect against UFCW as result of unsuccessful application made by it three months earlier - Employer asserting that UFCW and its local "one and the same" for purposes of the Act - In the alternative, employer asking for ruling on bar issue prior to directing vote - Board directing vote and noting that bar issue may be raised subsequently

WHITE ROSE CRAFTS AND NURSERY SALES LIMITED; RE UFCW, LOCAL 1977

..... (May/June)

554

Certification - Representation Vote - Security Guards - Union applying to represent bargaining unit of 140 security guards working at 36 locations - Applicant asking for Board order directing employer to produce labels containing names and addresses of each person on voters' list so as to allow union to mail written materials to employees before holding of representation vote - Board making requested order and directing that costs associated with mailing be borne by union

PROVINCIAL SECURITY SERVICES LTD.; RE USWA ..... (July/August)

730

Certification - Representation Vote - Union applying to represent bargaining unit of university faculty - Board rejecting university's request for mail-in ballot so as to permit faculty on sabbatical and on unpaid leave opportunity to vote

BROCK UNIVERSITY; RE BROCK UNIVERSITY FACULTY ASSOCIATION (UNINCORPORATED #2)..... (Jan./Feb.)

2

Certification - Trade Union - Trade Union Status - Board expressing concern regarding apparent failure to elect officers and admit members in accordance with rules set out in newly adopted constitution, but finding applicant to be a "trade union" within meaning of the Act

(RAMADA INN WINDSOR, C.O.B AS), COMMONWEALTH HOSPITALITY LTD.; RE THE PEOPLE'S UNION; RE TEAMSTERS LOCAL 847, LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS ..... (Mar./Apr.)

251

Certification - Trade Union - Trade Union Status - Board noting certain technical deficiencies in proving applicant's status exclusively on basis of grant of charter from parent union, but Board also relying on evidence regarding nature and scope of applicant's on-going activities to establish status - On going activities including collective bargaining in respect of 30 bargaining units representing 2000 members - Board finding applicant IWA-Canada, Local 1-1000 to be trade union within meaning of the Act

HAWKESBURY KNITTING MILLS; RE IWA - CANADA, LOCAL 1-100..... (Sept./Oct.)

862

Certification Where Act Contravened - Certification - Charter of Rights - Constitutional Law - Judicial Review - Representation Vote - Board concluding that conduct of employer in circulating amongst employees and engaging them in individual and group discussions regarding the union violating section 70 of the Act - Employer's refusal to answer questions regarding closing of store if union certified amounting to intentionally generated implied threat to employees' job security and also violating the Act - Board concluding that results of representation vote not disclosing employees' true wishes, that no remedy short of automatic certification sufficient to

counter effect of employer contraventions, and that union holding membership support sufficient for collective bargaining - Union certified under section 11 of the Act - Applications for judicial review brought by employer and by objecting employees dismissed by Divisional Court

WAL-MART CANADA INC.; RE USWA AND THE OLRB; RE TIZIANI ALFINI ET AL.;  
RE OLRB, JANICE JOHNSTON, VICE-CHAIR, H. PEACOCK, BOARD MEMBER R.W.  
PIRRIE, BOARD MEMBER AND USWA .....(July/August) 810

Certification Where Act Contravened - Certification - Charter of Rights - Constitutional Law - Judicial Review - Representation Vote - Board concluding that conduct of employer in circulating amongst employees and engaging them in individual and group discussions regarding the union violating section 70 of the Act - Employer's refusal to answer questions regarding closing of store if union certified amounting to intentionally generated implied threat to employees' job security and also violating the Act - Board concluding that results of representation vote not disclosing employees' true wishes, that no remedy short of automatic certification sufficient to counter effect of employer contraventions, and that union holding membership support sufficient for collective bargaining - Union certified under section 11 of the Act - Applications for judicial review brought by employer and by objecting employees dismissed by Divisional Court - Application for leave to appeal dismissed by Court of Appeal

WAL-MART CANADA INC.; RE USWA AND THE ONTARIO LABOUR RELATIONS  
BOARD .....(Sept./Oct.) 963

Certification Where Act Contravened - Certification - Construction Industry - Discharge - Discharge for Union Activity - Intimidation and Coercion - Remedies - Unfair Labour Practice - Board finding lay-off of union supporter improperly motivated and unlawful - Board finding that certain statements of employer reasonably perceived as threats to employment - Board issuing cease and desist order and directing that damages be paid to discharged employee - Board also certifying union under section 11 of the Act

MARSIL MECHANICAL INC. ("MARSIL"); RE ONTARIO PIPE TRADES COUNCIL  
OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE  
PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA  
("O.P.C.") AND THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES  
OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND  
CANADA ("U.A.") .....(Sept./Oct.) 900

Certification Where Act Contravened - Certification - Construction Industry - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board finding that employer violated the Act when it discharged union's two key supporters - Board finding membership support adequate for collective bargaining where union had signed up 2 employees out of 10 in bargaining unit and where union applying for ICI bargaining rights - Board finding that other requirements under section 11(1) also satisfied - Certificates issuing - Board also directing reinstatement and compensation for infringement of statutory rights, even if offer of reinstatement declined and even if the discharged employees were otherwise employed through entire period - Board also declaring that union entitled to conduct two meetings with employees during working hours, in the absence of the employer

PIETRO ELECTRIC LIMITED; RE IBEW CONSTRUCTION COUNCIL OF ONTARIO,  
AND IBEW LOCAL 773 .....(May/June) 527

Certification Where Act Contravened - Certification - Construction Industry - Evidence - Intimidation and Coercion - Practice and Procedure - Remedies - Representation Vote - Union alleging that employer making certain threats and that union should be certified under section 11 of the Act - Employer asking Board to entertain subjective testimony of employees regarding whether they felt able to vote freely and whether their own votes reflected their true wishes regarding union representation - Board ruling that proffered evidence not relevant and inadmissible - Board



finding that employer's sharing of its "economic analysis" with its employees was not a legitimate exercise of free speech, but designed to intimidate and coerce employees - Board finding that four statutory pre-conditions to certification under section 11 of the Act met - Certificates issuing

JAK ELECTRICAL CONTRACTORS LIMITED; RE IBEW, LOCAL 353 .....(July/August) 578

Certification Where Act Contravened - Certification - Discharge - Discharge for Union Activity - Interference in Trade Unions - Intimidation and Coercion - Remedies - Unfair Labour Practice - Employer threatening to shut plant and move to United States if union certified - Board certifying union under section 11 of the Act - Board directing reinstatement of inside union organizer who resigned position because he thought that he would be dismissed following union's loss in representation vote

TILL-FAB LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS' UNION OF CANADA (CAW) .....(Nov./Dec.) 1047

Certification Where Act Contravened - Certification - Discharge - Discharge for Union Activity - Interference in Trade Unions - Judicial Review - Unfair Labour Practice - Board finding that employer violated the Act in promoting an employee association in the face of the union organizing campaign and in indefinitely suspending the lead inside union organizer - Board certifying union under section 11(1) of the Act - Application for judicial review dismissed by Divisional Court

BURLINGTON GOLF & COUNTRY CLUB LIMITED; RE CANADIAN UNION OF OPERATING ENGINEERS AND GENERAL WORKERS AND THE OLRB.....(Mar./Apr.) 299

Certification Where Act Contravened - Certification - Representation Vote - Board concluding that conduct of employer in circulating amongst employees and engaging them in individual and group discussions regarding the union violating section 70 of the Act - Employer's refusal to answer questions regarding closing of store if union certified amounting to intentionally generated implied threat to employees' job security and also violating the Act - Board concluding that results of representation vote not disclosing employees' true wishes, that no remedy short of automatic certification sufficient to counter effect of employer contraventions, and that union holding membership support sufficient for collective bargaining - Union certified under section 11 of the Act

WAL-MART CANADA, INC.; RE USWA ..... (Jan./Feb.) 141

Change in Working Conditions - Certification - Representation Vote - Unfair Labour Practice - Union alleging that video tape and letter sent by employer to each employee's home on eve of representation vote contained material misrepresentations regarding statutory freeze and threats to employment - Union asking that second vote be ordered - Board rejecting union's allegations - Application for certification and unfair labour practice complaints dismissed

KRAFT CANADA INC.; RE UFCW, LOCAL 175.....(Mar./Apr.) 239

Change in Working Conditions - Discharge - Discharge for Union Activity - Interest Arbitration - Practice and Procedure - Unfair Labour Practice - Board earlier directing that first collective agreement between parties be settled by arbitration - Union alleging that employer unlawfully discharged 4 employees shortly after Board's first contract direction - Employer asserting that union had elected to have matter of discharges dealt with by interest arbitration board seized of the contract dispute and that unfair labour practice application should accordingly be dismissed - Board rejecting employer's request to dismiss (without prejudice to employer's right to argue how Board ought to proceed in view of whatever the award of the interest board may be) - Board, however, deferring further consideration of application to next hearing dates

scheduled 7 weeks hence (by which time results of interest arbitration may be known to the parties)

DOVER CORPORATION (CANADA) LIMITED, INDUSTRIAL DIVISION; RE NATIONAL AUTOMOBILE TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) .....(Nov./Dec.) 994

Change in Working Conditions - First Contract Arbitration - Intimidation and Coercion - Interference in Trade Unions - Termination - Unfair Labour Practice - Board finding breach of statutory freeze in respect of failure to pay Christmas bonus, but not in respect of failure to hold annual Christmas party - Board finding employer's letter to employees coercive and designed to undermine union's bargaining authority, and that employer otherwise seeking to interfere with exercise of employees' rights by intimidation and coercion - Board finding that collective bargaining unsuccessful because of refusal of employer to recognize union's bargaining authority, because of uncompromising nature of employer's bargaining positions without justification, and because of failure to make reasonable and expeditious efforts to conclude a collective agreement - Board directing that first agreement be settled by arbitration and that pending termination application be dismissed

FORT WILLIAM CLINIC; RE SEU LOCAL 268 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O. AND C.L.C. ....(May/June) 406

Charges - Certification - Representation Vote - Unfair Labour Practice - Canadian Health Care Workers (CHCW) applying to displace Service Workers' Union Local 220 as bargaining agent for certain hospital workers - Board finding that allegations made by CHCW concerning conduct of Local 220 and employer could not, even if true, support finding of breach of the Act or undermine results of representation vote - Applications dismissed

GRAND RIVER HOSPITAL CORPORATION; RE CANADIAN HEALTH CARE WORKERS (C.H.C.W.); RE LONDON & DISTRICT SERVICE WORKERS' UNION, LOCAL 220 .....(Sept./Oct.) 855

Charter of Rights - Certification - Certification Where Act Contravened - Constitutional Law - Judicial Review - Representation Vote - Board concluding that conduct of employer in circulating amongst employees and engaging them in individual and group discussions regarding the union violating section 70 of the Act - Employer's refusal to answer questions regarding closing of store if union certified amounting to intentionally generated implied threat to employees' job security and also violating the Act - Board concluding that results of representation vote not disclosing employees' true wishes, that no remedy short of automatic certification sufficient to counter effect of employer contraventions, and that union holding membership support sufficient for collective bargaining - Union certified under section 11 of the Act - Applications for judicial review brought by employer and by objecting employees dismissed by Divisional Court

WAL-MART CANADA INC.; RE USWA AND THE OLRB; RE TIZIANI ALFINI ET AL.; RE OLRB, JANICE JOHNSTON, VICE-CHAIR, H. PEACOCK, BOARD MEMBER R.W. PIRRIE, BOARD MEMBER AND USWA .....(July/August) 810

Charter of Rights - Certification - Certification Where Act Contravened - Constitutional Law - Judicial Review - Representation Vote - Board concluding that conduct of employer in circulating amongst employees and engaging them in individual and group discussions regarding the union violating section 70 of the Act - Employer's refusal to answer questions regarding closing of store if union certified amounting to intentionally generated implied threat to employees' job security and also violating the Act - Board concluding that results of representation vote not disclosing employees' true wishes, that no remedy short of automatic certification sufficient to counter effect of employer contraventions, and that union holding membership support sufficient for collective bargaining - Union certified under section 11 of the Act - Applications for

judicial review brought by employer and by objecting employees dismissed by Divisional Court - Application for leave to appeal dismissed by Court of Appeal

WAL-MART CANADA INC.; RE USWA AND THE ONTARIO LABOUR RELATIONS BOARD ..... (Sept./Oct.)

963

Charter of Rights and Freedoms - Certification - Constitutional Law - Fraud - Employer asserting that certificate ought not to issue, despite union having won representation vote, because union allegedly knowingly misrepresented number of employees in proposed bargaining unit so as to put union in vote position - Employer arguing that misrepresentation amounting to fraud - Union submitting that section 64 of the Act not applying because no certificate yet obtained and that employer not making out prima facie case of fraud - Board declaring that union entitled to certificate - Board rejecting submission that union required to exercise due diligence in providing Board with estimate of number of employees in unit, but listing matter for hearing on issue of whether certificate obtained by fraud - Board also rejecting submission that Charter rights denied because notices and ballots provided only in English and French and not in other languages of workplace

R-THETA INC.; RE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AERO-SPACE WORKERS ..... (Jan./Feb.)

116

Charter of Rights and Freedoms - Certification - Constitutional Law - Fraud - Employer asserting that certificate ought not to issue, despite union having won representation vote, because union allegedly knowingly misrepresented number of employees in proposed bargaining unit so as to put union in vote position - Employer arguing that misrepresentation amounting to fraud - Union submitting that section 64 of the Act not applying because no certificate yet obtained and that employer not making out prima facie case of fraud - Board declaring that union entitled to certificate - Board rejecting submission that union required to exercise due diligence in providing Board with estimate of number of employees in unit, but listing matter for hearing on issue of whether certificate obtained by fraud - Board also rejecting submission that Charter rights denied because notices and ballots provided only in English and French and not in other languages of workplace

R-THETA INC.; RE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AERO-SPACE WORKERS ..... (Jan./Feb.)

116

Charter of Rights and Freedoms - Constitutional Law - Construction Industry - Construction Industry Grievance - Discharge - Evidence - Practice and Procedure - Construction labourer discharged by Ontario Hydro for possessing and smoking marijuana at work and grieving that discharge was without just cause - Union seeking to exclude certain evidence on Charter grounds - Board finding evidence to establish just cause apart from evidence sought to be excluded - Board, therefore, not making any decision on union's Charter arguments - Union claiming that grievor's drug use was rooted in drug dependency that should be treated as a disease or disability requiring accommodation, rather than discipline - Board not satisfied that evidence establishing that grievor addicted or that he had come to grips with his situation - Grievance dismissed

ONTARIO HYDRO AND THE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION; RE ONTARIO ALLIED CONSTRUCTION TRADES COUNCIL AND LIUNA, LOCAL 506 ..... (July/August)

680

Collective Agreement - Adjournment - Duty of Fair Representation - Practice and Procedure - Ratification and Strike Vote - Unfair Labour Practice - Union and employer making joint request for early termination of collective agreement - Union and employer seeking to replace collective agreement with new 6-year agreement - Union and employer negotiating (and employees ratifying) new 6 year agreement after employer announcing plant closure - New agreement containing various "concessions", but also including increased severance package and provision allowing employees who had already accepted severance packages to revoke their acceptance and return to employment - Objecting employees alleging that union violated



its duty of fair representation and asking Board to deny joint request - Board denying adjournment requested by objecting employees' counsel who had been retained on the day before the hearing - Board finding that union made good faith efforts to balance competing interests of its members - Board dismissing challenge to ratification vote based on union allowing departed (or departing) employees to vote on new collective agreement - Unfair labour practice complaints dismissed - Board consenting to early termination of collective agreement

WILLIAM NEILSON LTD. AND TEAMSTERS LOCAL 647; RE SEAN DONOVAN ET AL .....(Nov./Dec.)

1056

Collective Agreement - Bargaining Rights - Sale of a Business - Union making sale of a business application and alleging that "MTI" is a successor to "E" - Board ruling that collective agreement relied on by union to establish broader bargaining rights was made in contravention of the Act and, therefore, may not be relied on - Collective agreement relied on by union involving early termination of earlier collective agreement without consent of the Board or, alternatively, amendment of collective agreement extending its term of operation - Neither result permitted under the Act - Board concluding that scope of union's bargaining rights did not include location in Elora, Ontario - Application dismissed

MINING TECHNOLOGIES INTERNATIONAL INC.; RE USWA.....(May/June)

482

Collective Agreement - Construction Industry - Judicial Review - Ratification and Strike Vote - Memorandum of settlement between union and employer in construction industry made contingent on ratification - Union submitting agreement to union's accredited delegates and not to employees in the bargaining unit - Board dismissing complaint alleging that provisions of section 79 of the Act requiring employee ratification in these circumstances - Application for judicial review dismissed by Divisional Court as premature

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, KEN WOODS, ALLAN DIGGON, TOM MCGREEVY AND IBEW, LOCAL 1788 BY ITS TRUSTEE, IBEW AND ONTARIO HYDRO AND EPSCA AND IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO, OLRB; RE POWER WORKERS' UNION - CUPE, LOCAL 1000 AND J. CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L. CRAUSEN, H.R. GILLIES, R.C. HANSEN, G. O'DONNELL, J. STARK, R. THOMS, H. TOMSETT AND R.R. YOUNG ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF THE IBEW, LOCAL 1788.....(May/June)

557

Collective Agreement - Interest Arbitration - Parties - Practice and Procedure - Unfair Labour Practice - Union alleging that employer violating the Act because of its refusal to execute or implement first collective agreement as directed by board of arbitration - Employer asserting that board of arbitration exceeded its jurisdiction and that its award is a nullity - Employer asserting same position in pending judicial review application of arbitration award - Board determining that bargaining unit employees not entitled to notice or to participate in Board proceeding - Board doubting its jurisdiction to sit in review of board of arbitration process - Board, in any event, exercising its discretion not to inquire into complaint because fundamental issue between the parties best dealt with by the Court in judicial review application - Application dismissed

GREENBERG STORES LIMITED; RE USWA .....(Jan./Feb.)

61

Collective Agreement - Judicial Review - Parties - Termination - Timeliness - Board dismissing application to terminate bargaining rights after finding that document executed between union and employer was "collective agreement" - Application not brought during last two months of collective agreement and, therefore, untimely - Employer applying for judicial review - Divisional Court holding that employer without status to seek review of Board's decision - Judicial review application dismissed

CANADIAN WILDLIFE FEDERATION; RE JAN BUREAU AND VICKI PAGE, ON THEIR OWN BEHALF AND ON BEHALF OF A GROUP OF EMPLOYEES OF THE CANADIAN WILDLIFE FEDERATION, USWA, LOCAL 8327, OLRB .....(May/June)

555

- Combination of Bargaining Units - Bargaining Units - Employer applying under Bill 7 transitional provisions to "de-combine" bargaining unit of full-time and part-time employees - Board finding that Bill 7's reference to "community of interest" is meant to invoke Board's traditional approach to the concept and not its more modern version as expressed in *Hospital for Sick Children* case - Board applying traditional approach and finding that existing bargaining unit not appropriate
- MARRIOTT CORPORATION OF CANADA LTD. (AT CARLETON UNIVERSITY); RE CUPE AND ITS LOCAL 2451 ..... (May/June) 468
- Conciliation - Bargaining Rights - Sale of a Business - Reference - Union representing bargaining unit of building cleaners employed by landlord - Bill 40 deeming subsequent contracting out to cleaning contractor to be sale of a business - Union giving notice to bargain to landlord and applying for conciliation - Landlord objecting to appointment of conciliation officer on ground that union no longer having bargaining rights as against it - Board finding that deemed sale of a business did not terminate union's bargaining rights with landlord or wipe out its collective agreement - Board advising Minister that she has authority to make requested appointment of conciliation officer
- CADILLAC FAIRVIEW CORPORATION LIMITED, THE ("CADILLAC FAIRVIEW") AND OAKDALE CLEANERS & MAINTENANCE LIMITED ("OAKDALE"); RE LIUNA, LOCAL 1059 ("THE UNION") ..... (Mar./Apr.) 187
- Constitutional Law - Certification - Certification Where Act Contravened - Charter of Rights - Judicial Review - Representation Vote - Board concluding that conduct of employer in circulating amongst employees and engaging them in individual and group discussions regarding the union violating section 70 of the Act - Employer's refusal to answer questions regarding closing of store if union certified amounting to intentionally generated implied threat to employees' job security and also violating the Act - Board concluding that results of representation vote not disclosing employees' true wishes, that no remedy short of automatic certification sufficient to counter effect of employer contraventions, and that union holding membership support sufficient for collective bargaining - Union certified under section 11 of the Act - Applications for judicial review brought by employer and by objecting employees dismissed by Divisional Court
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- WAL-MART CANADA INC.; RE USWA AND THE ONTARIO LABOUR RELATIONS BOARD ..... (Sept./Oct.) 963
- Constitutional Law - Certification - Practice and Procedure - Timeliness - Employer and incumbent union responding to union's certification application and asserting that application untimely - Employer also asserting that its labour relations governed by Canada Labour Code - Applicant

and incumbent union directed to file submissions within two days on constitutional issue, including submissions on how Board should deal with the application given the issue

STERLING MARINE FUELS, A DIVISION OF MCASPHALT INDUSTRIES LTD.; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION LOCAL NO. 880; RE IUOE, LOCAL 793 .....(Mar./Apr.) 280

Constitutional Law - Charter of Rights and Freedoms - Construction Industry - Construction Industry Grievance - Discharge - Evidence - Practice and Procedure - Construction labourer discharged by Ontario Hydro for possessing and smoking marijuana at work and grieving that discharge was without just cause - Union seeking to exclude certain evidence on Charter grounds - Board finding evidence to establish just cause apart from evidence sought to be excluded - Board, therefore, not making any decision on union's Charter arguments - Union claiming that grievor's drug use was rooted in drug dependency that should be treated as a disease or disability requiring accommodation, rather than discipline - Board not satisfied that evidence establishing that grievor addicted or that he had come to grips with his situation - Grievance dismissed

ONTARIO HYDRO AND THE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION; RE ONTARIO ALLIED CONSTRUCTION TRADES COUNCIL AND LIUNA, LOCAL 506 .....(July/August) 680

Constitutional Law - Sale of a Business - Board holding that it is without jurisdiction to consider sale of a business application where there has been sale of part of business from federally regulated undertaking to provincially regulated undertaking - Applications dismissed

ROGERS CANTEL PAGING INC.; RE LONDON AND DISTRICT SERVICE WORKERS UNION, LOCAL 220 ..... (Jan./Feb.) 129

Construction Industry - Bargaining Rights - Certification - UA and Labourers' union seeking to represent members of their trades employed by Ontario Hydro in ICI sector - Board not accepting employer's assertion that relevant employees already represented by applicants under Electrical Powers Systems Construction Association collective agreements

ONTARIO HYDRO; RE UA, LOCAL 527; RE POWER WORKERS' UNION, CUPE LOCAL 1000; RE LIUNA, LOCAL 1059; RE EPSCA.....(July/August) 659

Construction Industry - Bargaining Unit - Certification - Practice and Procedure - Millwrights' union and Plumbers' union seeking to represent certain construction employees of multi-plant employer - Steelworkers' union and Machinists' union already representing certain employees of employer in certain locations, including employees doing certain construction work - Board describing appropriate bargaining units in certification applications as excluding construction employees already represented by Steelworkers' union and Machinists' union - Employer submitting that Plumbers' union should be estopped from applying for certification because of union's alleged misrepresentation to employer regarding the union's intentions to obtain bargaining rights - Employer's allegations dismissed for failure to make out prima facie case

ALCAN ALUMINIUM LIMITED; RE MILLWRIGHT LOCAL 1410 ("MILLWRIGHTS"); RE ALCAN CHEMICALS, DIVISION OF ALCAN ALUMINIUM LIMITED ("CHEMICAL"); ALCAN ROLLED PRODUCTS ("ROLLED PRODUCTS"); ALCAN CABLE ("CABLE"); ALCAN FOIL PRODUCTS ("FOIL"); USWA, LOCAL 7949 AND LOCAL 8754 ("STEELWORKERS"); IAM, LODGE 54 ("MACHINISTS")..... (May/June) 305

Construction Industry - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Intimidation and Coercion - Remedies - Unfair Labour Practice - Board finding lay-off of union supporter improperly motivated and unlawful - Board finding that certain statements of employer reasonably perceived as threats to employment - Board issuing



cease and desist order and directing that damages be paid to discharged employee - Board also certifying union under section 11 of the Act

MARSIL MECHANICAL INC. ("MARSIL"); RE ONTARIO PIPE TRADES COUNCIL OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA ("O.P.C.") AND THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA ("U.A.")..... (Sept./Oct.)

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Construction Industry - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board finding that employer violated the Act when it discharged union's two key supporters - Board finding membership support adequate for collective bargaining where union had signed up 2 employees out of 10 in bargaining unit and where union applying for ICI bargaining rights - Board finding that other requirements under section 11(1) also satisfied - Certificates issuing - Board also directing reinstatement and compensation for infringement of statutory rights, even if offer of reinstatement declined and even if the discharged employees were otherwise employed through entire period - Board also declaring that union entitled to conduct two meetings with employees during working hours, in the absence of the employer

PIETRO ELECTRIC LIMITED; RE IBEW CONSTRUCTION COUNCIL OF ONTARIO, AND IBEW LOCAL 773 ..... (May/June)

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Construction Industry - Certification - Certification Where Act Contravened - Evidence - Intimidation and Coercion - Practice and Procedure - Remedies - Representation Vote - Union alleging that employer making certain threats and that union should be certified under section 11 of the Act - Employer asking Board to entertain subjective testimony of employees regarding whether they felt able to vote freely and whether their own votes reflected their true wishes regarding union representation - Board ruling that proffered evidence not relevant and inadmissible - Board finding that employer's sharing of its "economic analysis" with its employees was not a legitimate exercise of free speech, but designed to intimidate and coerce employees - Board finding that four statutory pre-conditions to certification under section 11 of the Act met - Certificates issuing

JAK ELECTRICAL CONTRACTORS LIMITED; RE IBEW, LOCAL 353 ..... (July/August)

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Construction Industry - Certification - Employee - IBEW applying to represent bargaining unit of electricians - Board determining that individuals holding "Pending Provisional C of Q" certificate from Ministry of Education who were at work of the date of application doing bargaining unit work eligible to vote in representation vote

SPEED ELECTRIC LIMITED; RE IBEW, LOCAL 353 ..... (Jan./Feb.)

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Construction Industry - Certification - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made

through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application for judicial review brought by objecting individual dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED,  
ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER ..... (Mar./Apr.)

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Construction Industry - Certification - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application to have judicial review application heard by single judge on grounds of urgency and motion to stay decision of the Board dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED;  
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Construction Industry - Certification - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Objecting individual seeking judicial review and filing three affidavits in support of application - Motions' court judge holding affidavits inadmissible and ordering them struck out

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED,  
ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER ..... (Mar./Apr.)

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Construction Industry - Certification - Employee - UA applying to represent bargaining units of plumbers and steamfitters and their apprentices - UA disputing entitlement to vote of individual allegedly not properly working under Trades Qualification and Apprenticeship Act - Board holding that disputed individual should be considered employed in bargaining unit, notwithstanding that he was neither an apprentice nor a journeyman plumber or steamfitter at the time

the application was made, but where he had spent a majority of his time on the application date working in the trade and he had been working or employed in the trade for not more than three months - Board finding that owner's brother not exercising managerial functions and that his ballot cast in representation vote should be counted

MARSIL MECHANICAL INC.; RE ONTARIO PIPE TRADES COUNCIL OF UA

.....(July/August)

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Construction Industry - Certification - Employer - Board finding that employees affected by application for certification employed by respondent and not by personnel agency

ESSO IMPERIAL OIL LIMITED ("ESSO"), 533670 ONTARIO LIMITED C.O.B. AS BEST PERSONNEL SERVICES ("BEST") AND; LIUNA, LOCAL 1089 (THE "LABOURERS")

.....(Sept./Oct.)

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Construction Industry - Certification - Employer - Millwrights' union and Plumbers' union applying to represent bargaining units of millwrights and plumbers in ICI sector - Board rejecting argument that "division" of corporate legal entity, rather than corporate legal entity itself, acting as "employer" for labour relations purposes

ALCAN ALUMINIUM LIMITED; RE MILLWRIGHT DISTRICT COUNCIL OF ONTARIO AND ITS LOCAL 1410; RE ALCAN CHEMICALS, DIVISION OF ALCAN ALUMINIUM LIMITED ("CHEMICALS"); ALCAN ROLLED PRODUCTS ("ROLLED PRODUCTS"); ALCAN CABLE ("CABLE"); ALCAN FOIL PRODUCTS ("FOIL"); USWA, LOCAL 7949 AND LOCAL 8754; IAM, LODGE 54.....(Mar./Apr.)

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Construction Industry - Certification - Evidence - Membership Evidence - Parties - Practice and Procedure - Representation Vote - IBEW Local 1687 applying to represent certain construction electricians employed by Ontario Hydro - Board earlier conducting pre-hearing representation vote and sealing box - Board concluding that PWU has no standing to participate further in proceeding as of right and that there is no reason to grant standing in exercise of Board's discretion - Board not satisfied that membership evidence filed by PWU conferring sufficient representational authority to permit PWU to participate in IBEW application - Board not persuaded that PWU can be permitted to rely on its collective agreement with Ontario Hydro as basis for standing - Board finding no justification to give PWU amicus curiae status - Board also deciding against opening sealed ballot box and counting ballots - Board directing hearing with respect to remaining outstanding issues

ONTARIO HYDRO; RE IBEW, LOCAL 1687; RE POWER WORKERS' UNION, CUPE LOCAL 1000 (PWU), IBEW, LOCAL 1788, EPSCA, THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO (ECAO); RE GROUP OF EMPLOYEES .....(July/August)

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Construction Industry - Certification - Judicial Review - Reconsideration - Trade Union - Power Workers' Union (PWU) seeking to displace International Brotherhood of Electrical Workers (IBEW) in several bargaining units - Board concluding that PWU not a construction "trade union" within meaning of section 126 of the Act and therefore not entitled to bring its certification applications - Applications for certification and request for reconsideration dismissed - PWU applying for judicial review - Motions Court judging striking out portion of affidavit and factum filed by PWU

ONTARIO HYDRO, G.T. SURDYKOWSKI, OLRB, IBEW, LOCAL 1788, IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO, IBEW, LOCAL 105, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, THE IBEW CONSTRUCTION COUNCIL OF ONTARIO, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1687, ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION AND ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO; RE PWU, CUPE, LOCAL 1000.....(Nov./Dec.)

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Construction Industry - Certification - Reconsideration - Trade Union - Power Workers' Union (PWU) seeking to displace International Brotherhood of Electrical Workers (IBEW) in several bargaining units - Board concluding that PWU not a construction "trade union" within meaning of section 126 of the Act and therefore not entitled to bring its certification applications - Applications for certification and request for reconsideration dismissed	
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INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, KEN WOODS, ALLAN DIGGON, TOM MCGREEVY AND IBEW, LOCAL 1788 BY ITS TRUSTEE, IBEW AND ONTARIO HYDRO AND EPSCA AND IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO, OLRB; RE POWER WORKERS' UNION - CUPE, LOCAL 1000 AND J. CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L. CRAUSEN, H.R. GILLIES, R.C. HANSEN, G. O'DONNELL, J. STARK, R. THOMS, H. TOMSETT AND R.R. YOUNG ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF THE IBEW, LOCAL 1788..... (May/June)	557

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- ELLIS-DON LIMITED; RE LIUNA, LOCAL 247 ..... (Mar./Apr.) 202
- Construction Industry - Construction Industry Grievance - Damages - Remedies - Board earlier finding employer bound to collective agreement, but holding that union estopped from enforcing agreement in respect of certain business arrangements in place when Board's decision issued - Board rejecting employer's argument that estoppel applying to contract with carpentry sub-contractor entered into after date of Board's earlier decision
- TORONTO DOMINION BANK; RE CARPENTERS & ALLIED WORKERS, LOCAL 27 CJA ..... (Mar./Apr.) 286
- Construction Industry - Construction Industry Grievance - Reconsideration - Related Employer - Employer seeking reconsideration of related employer decision on ground that Board failed to set out counsels' arguments and failed to address the arguments, including case law - Board noting that in order to fulfill its goal of timely decision-making, it is often required to determine how much detail a given decision warrants - Where law is relatively settled, the evidence relatively brief, and the outcomes glaringly apparent, Board may decide not to issue detailed reasons - The seven-page reasons for decision, in which the Board set out the relevant facts and applied its understanding of the law to those facts, were adequate - Reconsideration application dismissed
- GLOBAL MECHANICAL LTD., INTERCONTINENTAL PLUMBING AND FIRE PROTECTION CO. LTD., DYNAMIC POWER EXCAVATING LTD., IPJ INVESTMENTS LTD.; RE ONTARIO PIPE TRADES COUNCIL OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA ..... (Mar./Apr.) 232
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- MASTER INSULATORS' ASSOCIATION OF ONTARIO INC., THE; RE HFIA, LOCAL 95 ..... (Sept./Oct.) 912
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- MAGINE CONTRACTORS INC. AND/OR MAGINE CONTRACTORS (1994) INC.; RE IUOE, LOCAL 793 ..... (Mar./Apr.) 245
- Construction Industry - Construction Industry Grievance - Timeliness - Board declining to extend time for grieving under section 48(16) of the Act - Board concluding that union's failure to

pursue its strict legal rights because of employer's financial position does not establish "reasonable grounds" for extending time limits contained in the collective agreement - Grievances dismissed

STANDARD UNDERGROUND HIGH VOLTAGE LTD.; RE IBEW, LOCAL 353

.....(Sept./Oct.) 936

Construction Industry - Construction Industry Grievance - Whether certain disputed work "construction" work covered by the "Principal Agreement", or "maintenance" work covered by the "General Presidents' Maintenance Agreement" - Board not prepared to assign any significant weight to decision of the General Presidents' Committee for Contract Maintenance in Canada regarding the disputed work - Board finding that 7 of 8 projects examined involved construction and not maintenance work - Grievance allowed in part

DELTA CATALYTIC INDUSTRIAL SERVICES LTD.; RE IBEW, LOCAL 353; RE GENERAL PRESIDENTS' MAINTENANCE COMMITTEE.....(Nov./Dec.) 979

Construction Industry - Damages - Discharge - Remedies - Unfair Labour Practice - Employer acknowledging violation of the Act but parties disputing appropriate remedy - Board rejecting submission that reinstatement not appropriate - Employer directed to offer grievor position if its employee complement expands to more than 20 employees in 1997 - Board making no order regarding 1998 - Board finding delay in filing complaint not unreasonable and requiring no reduction in damages to which grievor otherwise entitled - Board also finding grievor's attempts at mitigation reasonable - Board deducting workers' compensation benefits received during 5 month period from damages to which grievor otherwise entitled - Board finding that but for employer's wrongful conduct, grievor would have earned sufficient credits to entitle him to employment insurance benefits during two periods of lay-off and Board ordering damages in that respect as well

TORBRIDGE CONSTRUCTION LTD.; RE LIUNA, LOCAL 183 .....(July/August) 751

Construction Industry - Final Offer Vote - Reference - Minister of Labour referring question of certain individuals' eligibility to vote in final offer vote directed by Minister in respect of employers operating in road building sector of the construction industry - Union submitting that eligible voters should include union members who had worked in road building sector in recent past and who would be eligible to vote according to union's internal rules set out in union constitution and by-laws - Board advising Minister that, even in the construction industry, only employees of the employer are entitled to vote, and union members who were not employees in the bargaining units are not eligible to vote

ASSOCIATED CONTRACTING INC.; RE IUOE, LOCAL 793 .....(Sept./Oct.) 813

Construction Industry - Intimidation and Coercion - Trusteeship - Unfair Labour Practice - Board finding that IBEW Local 1788 was engaged in reasonable dissent and declaring that IBEW had no just cause to impose trusteeship on its local - Board dismissing supervision of the local - Local's application under Bill 80 provisions of the Act allowed - IBEW's application to extend trusteeship dismissed

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND KEN WOODS; RE IBEW, LOCAL UNION 1788 .....(Nov./Dec.) 1022

Construction Industry - Jurisdictional Dispute - Board holding that operation of eight ton Pitman type boom truck crane in Board Area #21 is work of the Operating Engineers

BENNETT & WRIGHT GROUP AND UA LOCAL 508; RE IUOE, LOCAL 793 .(Nov./Dec.) 967

Construction Industry - Jurisdictional Dispute - Carpenters' union and Labourers' union disputing assignment of work in connection with: installation of bolts, ties and other miscellaneous metal attached to forms; installation of neoprene rubber on expansion joints; fabrication and installation of scaffolding, platforms and attached safety rails forming part of formwork;



placing, erecting and rough adjusting of column forms; and placing and assembly of shoring frames, screw jacks, U heads, stringers, joists, plywood and bracing - Board upholding employer's assignment of disputed work to composite crew of Carpenters and Labourers

RILI CONSTRUCTION WESTON LTD. AND LIUNA, LOCAL 837; RE CJA, LOCAL 18  
.....(Nov./Dec.)

1044

Construction Industry - Jurisdictional Dispute - Ironworkers' union and Carpenters' union disputing assignment of certain work in connection with installation of removable steel molds and accompanying steel supports for iron runner box at steel mill, including off-loading, rigging, moving, handling, fabrication, cutting, welding, fitting and bolting work - Board finding that work properly assigned to Ironworkers' union

JADDCO ANDERSON LIMITED, CJA, LOCAL 446; RE IRON WORKERS DISTRICT COUNCIL OF ONTARIO INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 786 .....(Mar./Apr.)

234

Construction Industry - Jurisdictional Dispute - Labourers' union and Carpenters' union disputing assignment of work of tending carpenters working on scaffolding and supervision of such work - Board satisfied that Labourers have tending (of carpenters engaged in scaffolding work) work jurisdiction in the relevant geographic area - Board requiring assignment of at least one construction labourer to tend carpenters on all five scaffolding jobs in issue and permitting employer to add additional labourers to tend carpenters as it considers appropriate - Board making no order with respect to supervision of work in dispute

DOUG CHALMERS CONSTRUCTION LIMITED; RE LIUNA, LOCAL 1089; RE CJA, LOCAL 1256.....(May/June)

385

Construction Industry - Jurisdictional Dispute - Parties - Practice and Procedure - Local 721 of Ironworkers' Union and Local 793 of Operating Engineers' union disputing assignment of certain work involving operation of cranes and fork-lifts used at car assembly plant in connection with removal and reinstallation of equipment for new production assembly line - Work in dispute had been subject of March 1997 arbitration decision under Canadian Plan for Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") - Employer and Local 793 asserting that Board ought not to entertain Local 721's application on basis that Plan had already issued decision - Local 721 not considering itself bound by the Plan and not participating in arbitration decision under the Plan - Board denying Plan intervenor status in Board proceeding - Board concluding that Local 721 not bound to the Plan in its own right or as result of actions of international union and that Local 721 accordingly not bound by arbitration decision - Board also determining that there is no basis to exercise its discretion against entertaining the application

RYCO ALBERICI AND IUOE, LOCAL 793; RE BSOIW, LOCAL 721 .....(Sept./Oct.)

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Construction Industry - Jurisdictional Dispute - Plumbers' union, Sheet Metal Workers' union, Millwrights' union, Ironworkers' union and Labourers' union disputing assignment of certain work involving uncrating and unpacking of equipment and dismantling and/or disposal of packaging material - Board ruling that work of uncrating equipment properly assigned to the trades and should not have been assigned to the Labourers - Where packaging material is dismantled and/or disposed of as equipment or machinery is being uncrated, work of dismantling and disposal of packaging material should be assigned to the trades - Where equipment or machinery is entirely uncrated, dismantling or disposal work should be assigned to Labourers' union

COMSTOCK CANADA LTD., AND LIUNA, LOCAL 1036; RE UA, LOCAL UNION 508  
.....(Sept./Oct.)

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Construction Industry - Jurisdictional Dispute - Practice and Procedure - Board describing nature of onus in jurisdictional dispute complaints - Carpenters' union and Labourers' union disputing

assignment of certain tending and clean-up work associated with erection of water cooling tower - Board concluding that work should have been assigned to Labourers' union

ECODYNE LIMITED; RE LIUNA, LOCAL 1036 ("LABOURERS") AND CJA, LOCAL 446 ("CARPENTERS") ..... (Mar./Apr.) 197

Construction Industry - Jurisdictional Dispute - Practice and Procedure - Timeliness - Carpenters' union asking Board to dismiss jurisdictional dispute complaint brought by Labourers' union on account of delay - Board not accepting applicant's desire to compile best case or lack of counsel resources to assist in that respect as sufficient reasons for 7 month delay - Application dismissed

WALTER AND SCI CONSTRUCTION (CANADA) LTD. AND CJA, LOCAL 446; RE LIUNA, LOCAL 1036 ..... (Sept./Oct.) 961

Construction Industry - Jurisdictional Dispute - Sheet Metal Workers' union and Carpenters' union disputing assignment of work in connection with handling and installation of wood blocking as part of installation of new built-up roofing system at automotive plant - Board upholding employer's assignment of disputed work to Sheet Metal Workers' union

SEMPLE-GOODER ROOFING LIMITED, BOTHWELL-ACCURATE CO. LTD. AND CJA, LOCAL 785; RE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 562 ..... (Nov./Dec.) 1046

Construction Industry - Trusteeship - Carpenters' union local complaining under Bill 80 provisions of the Act that trusteeship imposed on it by international union without "just cause" - Board finding that Carpenters' local not a construction trade union within the meaning of section 126 of the Act to which provisions of Bill 80 might apply

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1072 AND JOE ALMEIDA; RE CJA ..... (Sept./Oct.) 942

Construction Industry - Unfair Labour Practice - Natural Justice - Applicant asking vice-chair to disqualify himself on grounds of alleged reasonable apprehension of bias - Applicant relying on a series of decisions issued by vice-chair over previous four years which were decided against Applicant - Applicant's request dismissed

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS IN ITS OWN RIGHT ADN AS TRUSTEE AND KEN WOODS, ALLAN DIGGON, TOM MCGREEVY, ONTARIO HYDRO AND ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION ("EPSCA"); RE POWER WORKERS' UNION - CUPE, LOCAL 1000 ("PWU") AND J. CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L. CRAUSEN, H.R. GILLIES, R.C. HANSEN, G. O'DONNELL, J. STARK, R. THOMS, H. TOMSETT AND R.R. YOUNG; RE THE IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO ("IBEW-EPSCCO") ..... (Nov./Dec.) 1005

Construction Industry Grievance - Charter of Rights and Freedoms - Constitutional Law - Construction Industry - Discharge - Evidence - Practice and Procedure - Construction labourer discharged by Ontario Hydro for possessing and smoking marijuana at work and grieving that discharge was without just cause - Union seeking to exclude certain evidence on Charter grounds - Board finding evidence to establish just cause apart from evidence sought to be excluded - Board, therefore, not making any decision on union's Charter arguments - Union claiming that grievor's drug use was rooted in drug dependency that should be treated as a disease or disability requiring accommodation, rather than discipline - Board not satisfied that evidence establishing that grievor addicted or that he had come to grips with his situation - Grievance dismissed

ONTARIO HYDRO AND THE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION; RE ONTARIO ALLIED CONSTRUCTION TRADES COUNCIL AND LIUNA, LOCAL 506 ..... (July/August) 680

- Construction Industry Grievance - Construction Industry - Damages - Jurisdictional Dispute - Remedies - Board earlier resolving jurisdictional dispute complaint involving Painters' union in favour of Labourers' union - Labourers' seeking damages as result of improper assignment - Board following *Robertson-Yates* and *Sawyers & Associates* decisions - Board declining to award damages on basis that assignment of work to Painters' union was not unreasonable
- ELLIS-DON LIMITED; RE LIUNA, LOCAL 247 ..... (Mar./Apr.) 202
- Construction Industry Grievance - Construction Industry - Damages - Remedies - Board earlier finding employer bound to collective agreement, but holding that union estopped from enforcing agreement in respect of certain business arrangements in place when Board's decision issued - Board rejecting employer's argument that estoppel applying to contract with carpentry sub-contractor entered into after date of Board's earlier decision
- TORONTO DOMINION BANK; RE CARPENTERS & ALLIED WORKERS, LOCAL 27 CJA ..... (Mar./Apr.) 286
- Construction Industry Grievance - Construction Industry - Reconsideration - Related Employer - Employer seeking reconsideration of related employer decision on ground that Board failed to set out counsels' arguments and failed to address the arguments, including case law - Board noting that in order to fulfill its goal of timely decision-making, it is often required to determine how much detail a given decision warrants - Where law is relatively settled, the evidence relatively brief, and the outcomes glaringly apparent, Board may decide not to issue detailed reasons - The seven-page reasons for decision, in which the Board set out the relevant facts and applied its understanding of the law to those facts, were adequate - Reconsideration application dismissed
- GLOBAL MECHANICAL LTD., INTERCONTINENTAL PLUMBING AND FIRE PROTECTION CO. LTD., DYNAMIC POWER EXCAVATING LTD., IPJ INVESTMENTS LTD.; RE ONTARIO PIPE TRADES COUNCIL OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA ..... (Mar./Apr.) 232
- Construction Industry Grievance - Construction Industry - Remedies - Union amending Hiring Hall Procedures to discourage members from accepting name-hires - Board finding that amendment to Hiring Hall Procedures undermining provisions of collective agreement granting employer certain privilege regarding name-hires - Board finding that collective agreement containing implied term that neither party will conduct itself in manner so as to frustrate its operation - Board declaring that union's amendment to Hiring Hall Procedures violating collective agreement, but declining to issue cease and desist order
- MASTER INSULATORS' ASSOCIATION OF ONTARIO INC., THE; RE HFIA, LOCAL 95 ..... (Sept./Oct.) 912
- Construction Industry Grievance - Construction Industry - Sector Determination - Employer and union bound to collective agreement in residential sector of construction industry - Collective agreement requiring employer to apply ICI collective agreement for work performed in ICI sector - Board rejecting argument that union estopped from grieving employer's failure to pay employees weekly, rather than bi-weekly - Board finding work at two disputed sites within ambit of ICI collective agreement - Grievances alleging improper pay allowed
- MAGINE CONTRACTORS INC. AND/OR MAGINE CONTRACTORS (1994) INC.; RE IUOE, LOCAL 793 ..... (Mar./Apr.) 245
- Construction Industry Grievance - Construction Industry - Timeliness - Board declining to extend time for grieving under section 48(16) of the Act - Board concluding that union's failure to



pursue its strict legal rights because of employer's financial position does not establish "reasonable grounds" for extending time limits contained in the collective agreement - Grievances dismissed

STANDARD UNDERGROUND HIGH VOLTAGE LTD.; RE IBEW, LOCAL 353

.....(Sept./Oct.) 936

Construction Industry Grievance - Construction Industry - Whether certain disputed work "construction" work covered by the "Principal Agreement", or "maintenance" work covered by the "General Presidents' Maintenance Agreement" - Board not prepared to assign any significant weight to decision of the General Presidents' Committee for Contract Maintenance in Canada regarding the disputed work - Board finding that 7 of 8 projects examined involved construction and not maintenance work - Grievance allowed in part

DELTA CATALYTIC INDUSTRIAL SERVICES LTD.; RE IBEW, LOCAL 353; RE GENERAL PRESIDENTS' MAINTENANCE COMMITTEE.....(Nov./Dec.)

979

Damages - Construction Industry - Construction Industry Grievance - Jurisdictional Dispute - Remedies - Board earlier resolving jurisdictional dispute complaint involving Painters' union in favour of Labourers' union - Labourers' seeking damages as result of improper assignment - Board following *Robertson-Yates* and *Sawyers & Associates* decisions - Board declining to award damages on basis that assignment of work to Painters' union was not unreasonable

ELLIS-DON LIMITED; RE LIUNA, LOCAL 247.....(Mar./Apr.)

202

Damages - Construction Industry - Construction Industry Grievance - Remedies - Board earlier finding employer bound to collective agreement, but holding that union estopped from enforcing agreement in respect of certain business arrangements in place when Board's decision issued - Board rejecting employer's argument that estoppel applying to contract with carpentry sub-contractor entered into after date of Board's earlier decision

TORONTO DOMINION BANK; RE CARPENTERS & ALLIED WORKERS, LOCAL 27 CJA.....(Mar./Apr.)

286

Damages - Construction Industry - Discharge - Remedies - Unfair Labour Practice - Employer acknowledging violation of the Act but parties disputing appropriate remedy - Board rejecting submission that reinstatement not appropriate - Employer directed to offer grievor position if its employee complement expands to more than 20 employees in 1997 - Board making no order regarding 1998 - Board finding delay in filing complaint not unreasonable and requiring no reduction in damages to which grievor otherwise entitled - Board also finding grievor's attempts at mitigation reasonable - Board deducting workers' compensation benefits received during 5 month period from damages to which grievor otherwise entitled - Board finding that but for employer's wrongful conduct, grievor would have earned sufficient credits to entitle him to employment insurance benefits during two periods of lay-off and Board ordering damages in that respect as well

TORBRIDGE CONSTRUCTION LTD.; RE LIUNA, LOCAL 183.....(July/August)

751

Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board concluding that employer's decision to contract out certain maintenance work tainted by anti-union animus - Contracting out leading to termination of two maintenance workers - Board directing employer to reinstate terminated employees, to compensate them for lost income, and to post certain notices in the workplace

DA VINCI CENTRE, SOCIETA ITALIANA DI BENEVOLENZA PRINCIPE DI PIEMONTE C.O.B. AS THE; RE HOSPITALITY, COMMERCIAL AND SERVICE EMPLOYEES UNION, LOCAL 73 CHARTERED BY H.E.R.E. ....(Nov./Dec.)

970

Discharge - Certification - Certification Where Act Contravened - Construction Industry - Discharge for Union Activity - Intimidation and Coercion - Remedies - Unfair Labour Practice - Board

finding lay-off of union supporter improperly motivated and unlawful - Board finding that certain statements of employer reasonably perceived as threats to employment - Board issuing cease and desist order and directing that damages be paid to discharged employee - Board also certifying union under section 11 of the Act

MARSIL MECHANICAL INC. ("MARSIL"); RE ONTARIO PIPE TRADES COUNCIL OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA ("O.P.C.") AND THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA ("U.A.") ..... (Sept./Oct.)

900

Discharge - Certification - Certification Where Act Contravened - Construction Industry - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board finding that employer violated the Act when it discharged union's two key supporters - Board finding membership support adequate for collective bargaining where union had signed up 2 employees out of 10 in bargaining unit and where union applying for ICI bargaining rights - Board finding that other requirements under section 11(1) also satisfied - Certificates issuing - Board also directing reinstatement and compensation for infringement of statutory rights, even if offer of reinstatement declined and even if the discharged employees were otherwise employed through entire period - Board also declaring that union entitled to conduct two meetings with employees during working hours, in the absence of the employer

PIETRO ELECTRIC LIMITED; RE IBEW CONSTRUCTION COUNCIL OF ONTARIO, AND IBEW LOCAL 773 ..... (May/June)

527

Discharge - Certification - Certification Where Act Contravened - Discharge for Union Activity - Interference in Trade Unions - Intimidation and Coercion - Remedies - Unfair Labour Practice - Employer threatening to shut plant and move to United States if union certified - Board certifying union under section 11 of the Act - Board directing reinstatement of inside union organizer who resigned position because he thought that he would be dismissed following union's loss in representation vote

TILL-FAB LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS' UNION OF CANADA (CAW) ..... (Nov./Dec.)

1047

Discharge - Certification - Certification Where Act Contravened - Discharge for Union Activity - Interference in Trade Unions - Judicial Review - Unfair Labour Practice - Board finding that employer violated the Act in promoting an employee association in the face of the union organizing campaign and in indefinitely suspending the lead inside union organizer - Board certifying union under section 11(1) of the Act - Application for judicial review dismissed by Divisional Court

BURLINGTON GOLF & COUNTRY CLUB LIMITED; RE CANADIAN UNION OF OPERATING ENGINEERS AND GENERAL WORKERS AND THE OLRB..... (Mar./Apr.)

299

Discharge - Change in Working Conditions - Discharge for Union Activity - Interest Arbitration - Practice and Procedure - Unfair Labour Practice - Board earlier directing that first collective agreement between parties be settled by arbitration - Union alleging that employer unlawfully discharged 4 employees shortly after Board's first contract direction - Employer asserting that union had elected to have matter of discharges dealt with by interest arbitration board seized of the contract dispute and that unfair labour practice application should accordingly be dismissed - Board rejecting employer's request to dismiss (without prejudice to employer's right to argue how Board ought to proceed in view of whatever the award of the interest board may be) - Board, however, deferring further consideration of application to next hearing dates scheduled 7 weeks hence (by which time results of interest arbitration may be known to the parties)

DOVER CORPORATION (CANADA) LIMITED, INDUSTRIAL DIVISION; RE NATIONAL AUTOMOBILE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) ..... (Nov./Dec.)

994

Discharge - Charter of Rights and Freedoms - Constitutional Law - Construction Industry - Construction Industry Grievance - Evidence - Practice and Procedure - Construction labourer discharged by Ontario Hydro for possessing and smoking marijuana at work and grieving that discharge was without just cause - Union seeking to exclude certain evidence on Charter grounds - Board finding evidence to establish just cause apart from evidence sought to be excluded - Board, therefore, not making any decision on union's Charter arguments - Union claiming that grievor's drug use was rooted in drug dependency that should be treated as a disease or disability requiring accommodation, rather than discipline - Board not satisfied that evidence establishing that grievor addicted or that he had come to grips with his situation - Grievance dismissed	
ONTARIO HYDRO AND THE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION; RE ONTARIO ALLIED CONSTRUCTION TRADES COUNCIL AND LIUNA, LOCAL 506 .....	(July/August) 680
Discharge - Construction Industry - Damages - Remedies - Unfair Labour Practice - Employer acknowledging violation of the Act but parties disputing appropriate remedy - Board rejecting submission that reinstatement not appropriate - Employer directed to offer grievor position if its employee complement expands to more than 20 employees in 1997 - Board making no order regarding 1998 - Board finding delay in filing complaint not unreasonable and requiring no reduction in damages to which grievor otherwise entitled - Board also finding grievor's attempts at mitigation reasonable - Board deducting workers' compensation benefits received during 5 month period from damages to which grievor otherwise entitled - Board finding that but for employer's wrongful conduct, grievor would have earned sufficient credits to entitle him to employment insurance benefits during two periods of lay-off and Board ordering damages in that respect as well	
TORBRIDGE CONSTRUCTION LTD.; RE LIUNA, LOCAL 183 .....	(July/August) 751
Discharge - Discharge for Union Activity - Judicial Review - Reconsideration - Unfair Labour Practice - Board exercising its discretion not to inquire into unfair labour practice complaint where substance of complaint and of grievances at arbitration overlapped, where allegation of anti-union motivation was before arbitration board and where arbitration board had complete jurisdiction to inquire into matter - Complaint dismissed - Request for reconsideration dismissed - Application for judicial review dismissed by Divisional Court	
DEMETRIADES, JOHN; RE OLRB AND ST. JOSEPH'S HEALTH CENTRE.....	(May/June) 556
Discharge - Duty of Fair Representation - Unfair Labour Practice - Applicant alleging that union violated its duty of fair representation by failing to present certain arguments and evidence with respect to systemic race discrimination at applicant's discharge grievance arbitration - Application dismissed	
LANUZA, TERESITA; RE ONA; RE THE TORONTO HOSPITAL .....	(July/August) 615
Discharge - Duty of Fair Representation - Unfair Labour Practice - Applicant alleging that union did not take his case to arbitration notwithstanding vote of members to go to arbitration - Board not satisfied that applicant's pleading making out prima facie case - Applicant directed to file new fully particularized statement of fact in support of complaint	
BOYER, RON; RE IAM, LOCAL LODGE 2792 AND DDM PLASTICS INC. ....	(Mar./Apr.) 183
Discharge - Evidence - Health and Safety - Practice and Procedure - Board declining to receive three letters authored by clinical psychologist tendered by applicant where applicant unprepared to produce letters' author for purposes of cross-examination - Applicant employee alleging unlawful reprisals under Occupational Health and Safety Act in connection with complaints of sexual harassment made to Human Rights Commission - Events complained of occurring between 1992 and 1996 - Board exercising its discretion against inquiring into application	
SAMMONS & CHANNER MEN'S CLOTHING; RE IRENE FRANK .....	(Mar./Apr.) 256



Discharge - First Contract Arbitration - Strike - Unfair Labour Practice - Board's earlier direction that first contract be settled by arbitration ending strike - Union and employer disputing return to work obligations - Board making various preliminary rulings at parties' request - Board not accepting union's argument that section 43(14)(b) gives senior employees the right to be returned to any work that they are able to do, even if it is not the same work that they were performing before the strike started - Board finding that section 43(14) applies to require employer to reinstate all employees by seniority, regardless of whether or not they were working at the time the first contract direction was issued - Board rejecting union's argument that section 43(14) provides a guarantee against discharge of striking employees in the event of a first contract direction - Board also finding no statutory basis for requiring employer to justify terminations on either just cause or cause standard per se

DOVER CORPORATION (CANADA) LIMITED, INDUSTRIAL DIVISION; RE NATIONAL AUTOMOBILE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) ..... (May/June)

396

Discharge - Health and Safety - Applicant alleging that she was fired as a result of complaints of sexual harassment and that in making those complaints she was exercising rights under the Occupational Health and Safety Act - Board concluding that applicant's termination was not motivated by complaints of harassment - Application dismissed

LYNDHURST HOSPITAL; RE PAULINE AU ..... (July/August)

616

Discharge - Judicial Review - Health and Safety - Reconsideration - Applicant asserting that she was twice injured at work, that the injuries were reported to her employer, and that on one occasion she sought, and obtained, an assignment of lighter duties to accommodate her injury - Applicant subsequently released from employment during probation and alleging unlawful reprisal contrary to Occupational Health and Safety Act - Board dismissing application for failure to make out prima facie case - Applicant's reconsideration request denied - Application for judicial review dismissed by Divisional Court

HORIZON PLASTICS COMPANY LIMITED, UFCW AND OLRB; RE SHELLY STILES ..... (Nov./Dec.)

1066

Discharge for Union Activity - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Intimidation and Coercion - Remedies - Unfair Labour Practice - Board finding lay-off of union supporter improperly motivated and unlawful - Board finding that certain statements of employer reasonably perceived as threats to employment - Board issuing cease and desist order and directing that damages be paid to discharged employee - Board also certifying union under section 11 of the Act

MARSIL MECHANICAL INC. ("MARSIL"); RE ONTARIO PIPE TRADES COUNCIL OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA ("O.P.C.") AND THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA ("U.A.") ..... (Sept./Oct.)

900

Discharge for Union Activity - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Remedies - Unfair Labour Practice - Board finding that employer violated the Act when it discharged union's two key supporters - Board finding membership support adequate for collective bargaining where union had signed up 2 employees out of 10 in bargaining unit and where union applying for ICI bargaining rights - Board finding that other requirements under section 11(1) also satisfied - Certificates issuing - Board also directing reinstatement and compensation for infringement of statutory rights, even if offer of reinstatement declined and even if the discharged employees were otherwise employed through entire

period - Board also declaring that union entitled to conduct two meetings with employees during working hours, in the absence of the employer

PIETRO ELECTRIC LIMITED; RE IBEW CONSTRUCTION COUNCIL OF ONTARIO,  
AND IBEW LOCAL 773 ..... (May/June) 527

Discharge for Union Activity - Certification - Certification Where Act Contravened - Discharge -  
Interference in Trade Unions - Intimidation and Coercion - Remedies - Unfair Labour Practice -  
Employer threatening to shut plant and move to United States if union certified - Board  
certifying union under section 11 of the Act - Board directing reinstatement of inside union  
organizer who resigned position because he thought that he would be dismissed following  
union's loss in representation vote

TILL-FAB LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND  
GENERAL WORKERS' UNION OF CANADA (CAW) ..... (Nov./Dec.) 1047

Discharge for Union Activity - Certification - Certification Where Act Contravened - Discharge -  
Interference in Trade Unions - Judicial Review - Unfair Labour Practice - Board finding that  
employer violated the Act in promoting an employee association in the face of the union  
organizing campaign and in indefinitely suspending the lead inside union organizer - Board  
certifying union under section 11(1) of the Act - Application for judicial review dismissed by  
Divisional Court

BURLINGTON GOLF & COUNTRY CLUB LIMITED; RE CANADIAN UNION OF OP-  
ERATING ENGINEERS AND GENERAL WORKERS AND THE OLRB..... (Mar./Apr.) 299

Discharge for Union Activity - Change in Working Conditions - Discharge - Interest Arbitration -  
Practice and Procedure - Unfair Labour Practice - Board earlier directing that first collective  
agreement between parties be settled by arbitration - Union alleging that employer unlawfully  
discharged 4 employees shortly after Board's first contract direction - Employer asserting that  
union had elected to have matter of discharges dealt with by interest arbitration board seized of  
the contract dispute and that unfair labour practice application should accordingly be dis-  
missed - Board rejecting employer's request to dismiss (without prejudice to employer's right  
to argue how Board ought to proceed in view of whatever the award of the interest board may  
be) - Board, however, deferring further consideration of application to next hearing dates  
scheduled 7 weeks hence (by which time results of interest arbitration may be known to the  
parties)

DOVER CORPORATION (CANADA) LIMITED, INDUSTRIAL DIVISION; RE NA-  
TIONAL AUTOMOBILE, TRANSPORTATION AND GENERAL WORKERS UNION OF  
CANADA (CAW-CANADA) ..... (Nov./Dec.) 994

Discharge for Union Activity - Discharge - Judicial Review - Reconsideration - Unfair Labour  
Practice - Board exercising its discretion not to inquire into unfair labour practice complaint  
where substance of complaint and of grievances at arbitration overlapped, where allegation of  
anti-union motivation was before arbitration board and where arbitration board had complete  
jurisdiction to inquire into matter - Complaint dismissed - Request for reconsideration dis-  
missed - Application for judicial review dismissed by Divisional Court

DEMETRIADES, JOHN; RE OLRB AND ST. JOSEPH'S HEALTH CENTRE..... (May/June) 556

Discharge for Union Activity - Discharge - Remedies - Unfair Labour Practice - Board concluding that  
employer's decision to contract out certain maintenance work tainted by anti-union animus -  
Contracting out leading to termination of two maintenance workers - Board directing employer  
to reinstate terminated employees, to compensate them for lost income, and to post certain  
notices in the workplace

DA VINCI CENTRE, SOCIETA ITALIANA DI BENEVOLENZA PRINCIPE DI PIEMONTE  
C.O.B. AS THE; RE HOSPITALITY, COMMERCIAL AND SERVICE EMPLOYEES  
UNION, LOCAL 73 CHARTERED BY H.E.R.E. .... (Nov./Dec.) 970

- Duty of Fair Representation - Adjournment - Collective Agreement - Practice and Procedure - Ratification and Strike Vote - Unfair Labour Practice - Union and employer making joint request for early termination of collective agreement - Union and employer seeking to replace collective agreement with new 6-year agreement - Union and employer negotiating (and employees ratifying) new 6 year agreement after employer announcing plant closure - New agreement containing various "concessions", but also including increased severance package and provision allowing employees who had already accepted severance packages to revoke their acceptance and return to employment - Objecting employees alleging that union violated its duty of fair representation and asking Board to deny joint request - Board denying adjournment requested by objecting employees' counsel who had been retained on the day before the hearing - Board finding that union made good faith efforts to balance competing interests of its members - Board dismissing challenge to ratification vote based on union allowing departed (or departing) employees to vote on new collective agreement - Unfair labour practice complaints dismissed - Board consenting to early termination of collective agreement
- WILLIAM NEILSON LTD. AND TEAMSTERS LOCAL 647; RE SEAN DONOVAN ET AL .....(Nov./Dec.) 1056
- Duty of Fair Representation - Discharge - Unfair Labour Practice - Applicant alleging that union did not take his case to arbitration notwithstanding vote of members to go to arbitration - Board not satisfied that applicant's pleading making out *prima facie* case - Applicant directed to file new fully particularized statement of fact in support of complaint
- BOYER, RON; RE IAM, LOCAL LODGE 2792 AND DDM PLASTICS INC. ....(Mar./Apr.) 183
- Duty of Fair Representation - Discharge - Unfair Labour Practice - Applicant alleging that union violated its duty of fair representation by failing to present certain arguments and evidence with respect to systemic race discrimination at applicant's discharge grievance arbitration - Application dismissed
- LANUZA, TERESITA; RE ONA; RE THE TORONTO HOSPITAL .....(July/August) 615
- Duty of Fair Representation - Judicial Review - Unfair Labour Practice - Board declining to inquire into duty of fair representation complaint in view of passage of time from critical events, applicant's delay in raising his concerns with the union and the Board, the likelihood of success of the complaint and the utility of any remedy that might flow - Application for judicial review dismissed by Divisional Court
- GOEL, BHARAT; RE OLRB AND YORK UNIVERSITY STAFF ASSOCIATION .....(Nov./Dec.) 1065
- Duty of Fair Representation - Ratification and Strike Votes - Unfair Labour Practice - Group of employees alleging that union misled employees about terms of contract settlement - Employees asserting that Labour Relations Act obliging union in conducting ratification votes to tell its members in advance of the meeting and in written form contents of proposed settlement - Board dismissing application for failure to make out *prima facie* case
- GENERAL MOTORS OF CANADA LIMITED, PEREGRINE OSHAWA INC. AND PEREGRINE WINDSOR INC.; RE GROUP OF EMPLOYEES REPRESENTED BY RENE DU-BEAU, LEO KELLY, EUGENE WEBER AND BRUCE COOK; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF CANADA (CAW-CANADA) AND LOCAL NO. 222 CAW .....(Mar./Apr.) 210
- Duty of Fair Representation - Unfair Labour Practice - Applicant asserting that union's failure to initiate judicial review application of arbitration decision (in circumstances where union allegedly agreed that such an application ought to be brought) violating the Act - Application dismissed
- DEMETRIADES, JOHN; RE CUPE, LOCAL 1144; RE ST. JOSEPH'S HEALTH CENTRE .....(Sept./Oct.) 840



Duty to Bargain in Good Faith - Bargaining Rights - Bargaining Unit - Unfair Labour Practice - Board finding Health Unit employer in violation of its duty to bargain in good faith by bargaining to impasse the issue of proposed changes to the bargaining unit description, and by refusing to remove its proposal from the negotiating table when the parties were in a strike/lock-out position - Board directing employer to cease insisting on its bargaining unit proposal and to meet with union with 2 weeks to bargain in good faith and make every reasonable effort to effect a collective agreement	
HALIBURTON, KAWARTHA, PINE RIDGE DISTRICT HEALTH UNIT; RE CUPE LOCAL 1602 .....	(Sept./Oct.) 857
Duty to Bargain in Good Faith - Interim Relief - Remedies - Unfair Labour Practice - On eve of strike, employer unilaterally transferring seven bargaining unit positions outside of bargaining unit - Union filing unfair labour practice complaint and asking for interim order requiring employer to continue to recognize union as exclusive bargaining agent for the seven individuals holding the disputed positions - Board concluding that balance of harm weighing in favour of union - Application for interim order granted pending disposition or resolution of unfair labour practice complaint	
REGIONAL MUNICIPALITY OF NIAGARA, THE; RE CUPE, LOCAL 1287..	(July/August) 733
Duty to Bargain in Good Faith - Interim Relief - Remedies - Unfair Labour Practice - Union alleging that employer's failure to provide certain financial and other information violating duty to bargain - Board making interim order under section 98 of the Act directing production of information and setting out mechanism for its collection	
METRO CAB COMPANY LIMITED AND METRO CABS ASSOCIATES' COMMITTEE REPRESENTING ASSOCIATES OF METRO CAB COMPANY LIMITED; RE RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE USWA AND LOCAL 1688 THE ONTARIO TAXI UNION .....	(May/June) 474
Duty to Bargain in Good Faith - Remedies - Strike - Unfair Labour Practice - Employer's proposal made in January for new collective agreement rejected and employees striking - Union and employees purporting to accept proposal in March - Board satisfied that January proposal had been extinguished by passage of time and in context of long strike - Board finding that employer's rejection of union's repeated overtures to return to bargaining violating its duty to bargain - Board also finding that employer's April proposal for a new collective agreement was designed to invite rejection and was in breach of the Act - Application allowed - Parties directed to return to bargaining forthwith to bargain in good faith and to make every reasonable effort to reach a collective agreement	
PC WORLD, CIRCUIT WORLD CORPORATION, OPERATING AS; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA), LOCAL 124 .....	(July/August) 711
Employee - Certification - Construction Industry - IBEW applying to represent bargaining unit of electricians - Board determining that individuals holding "Pending Provisional C of Q" certificate from Ministry of Education who were at work of the date of application doing bargaining unit work eligible to vote in representation vote	
SPEED ELECTRIC LIMITED; RE IBEW, LOCAL 353 .....	(Jan./Feb.) 138
Employee - Certification - Construction Industry - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the	

vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application for judicial review brought by objecting individual dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED,  
ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER ..... (Mar./Apr.)

298

Employee - Certification - Construction Industry - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application to have judicial review application heard by single judge on grounds of urgency and motion to stay decision of the Board dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED;  
MICHAEL BAUER RE OLRB, IBEW, LOCAL 353..... (Jan./Feb.)

169

Employee - Certification - Construction Industry - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Objecting individual seeking judicial review and filing three affidavits in support of application - Motions' court judge holding affidavits inadmissible and ordering them struck out

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED,  
ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER ..... (Mar./Apr.)

297

Employee - Certification - Construction Industry - UA applying to represent bargaining units of plumbers and steamfitters and their apprentices - UA disputing entitlement to vote of individual allegedly not properly working under Trades Qualification and Apprenticeship Act - Board holding that disputed individual should be considered employed in bargaining unit, notwithstanding that he was neither an apprentice nor a journeyman plumber or steamfitter at the time the application was made, but where he had spent a majority of his time on the application date working in the trade and he had been working or employed in the trade for not more than three months - Board finding that owner's brother not exercising managerial functions and that his ballot cast in representation vote should be counted

MARSIL MECHANICAL INC.; RE ONTARIO PIPE TRADES COUNCIL OF UA  
.....(July/August)

636

Employee - Certification - Evidence - Membership Evidence - Reconsideration - Representation Vote - Trade Union Status - Board finding that locals of UNITE and UNITE's Ontario District Council are inter-related organizations each of which has status of a trade union within the meaning of the Act - Employer and objecting employees asking Board to dismiss application on grounds that application filed by District Council was accompanied by evidence of membership in International union - Board seeing no reason to overturn evidence of earlier finding regarding 40 percent "appearance" of support in applicant - Board allowing union to challenge employment status of two individuals for first time after the vote where their status was already in issue for other reasons and their ballots were already segregated

BLACK PHOTO CORPORATION; UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES ONTARIO DISTRICT COUNCIL; RE GROUP OF EMPLOYEES  
..... (May/June)

347

Employee - Certification - Judicial Review - Board finding that thirteen lead hands employed at employer's production facility exercising managerial functions and not "employees" for purposes of the Act - Certificate issuing - Application for judicial review dismissed by Divisional Court

GOURMET BAKER INC.; RE USWA AND THE OLRB.....(Mar./Apr.)

303

Employee - Certification - Representation Vote - Board determining that two individuals with sporadic contact with workplace and who perform work on an erratic and irregular basis are not in an employment relationship with employer and not eligible to vote in representation vote

BLACK PHOTO CORPORATION; RE UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES ONTARIO DISTRICT COUNCIL; RE GROUP OF EMPLOYEES  
.....(July/August)

559

Employee - Certification - Representation Vote - Board determining that two individuals with sporadic contact with workplace and who perform work on an erratic and irregular basis are not in an employment relationship with employer and not eligible to vote in representation vote

BLACK PHOTO CORPORATION; RE UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES ONTARIO DISTRICT COUNCIL; RE GROUP OF EMPLOYEES  
.....(July/August)

559

Employer - Bargaining Unit - Certification - Practice and Procedure - Prior to holding of representation vote, employer taking position that certain disputed individuals ought to be included in bargaining unit and union taking position that such individuals ought to be excluded - After ballots (including those of disputed individuals) cast and counted, both union and employer changing positions and purporting to adopt position formerly advanced by the other - Employer subsequently asking Board to direct new vote and to find that two bargaining units (one excluding the disputed individuals and one composed exclusively of the disputed individuals) appropriate - Employer asserting that another entity employing the disputed individuals - Board declining to direct second vote - Board finding disputed individuals to be employed by the



employer and not by the other entity - Board also finding that, in the circumstances, employer ought not to be permitted to raise new bargaining issue at this stage of proceedings - Board, in any event, not persuaded that applicant's proposed bargaining unit not appropriate - Certificate issuing

MARTHA'S GARDEN INC.; RE TEAMSTERS LOCAL UNION NO. 419 ..... (Sept./Oct.) 891

Employer - Certification - Construction Industry - Board finding that employees affected by application for certification employed by respondent and not by personnel agency

ESSO IMPERIAL OIL LIMITED ("ESSO"), 533670 ONTARIO LIMITED C.O.B. AS BEST PERSONNEL SERVICES ("BEST") AND; LIUNA, LOCAL 1089 (THE "LABOURERS") ..... (Sept./Oct.) 849

Employer - Certification - Construction Industry - Millwrights' union and Plumbers' union applying to represent bargaining units of millwrights and plumbers in ICI sector - Board rejecting argument that "division" of corporate legal entity, rather than corporate legal entity itself, acting as "employer" for labour relations purposes

ALCAN ALUMINIUM LIMITED; RE MILLWRIGHT DISTRICT COUNCIL OF ONTARIO AND ITS LOCAL 1410; RE ALCAN CHEMICALS, DIVISION OF ALCAN ALUMINIUM LIMITED ("CHEMICALS"); ALCAN ROLLED PRODUCTS ("ROLLED PRODUCTS"); ALCAN CABLE ("CABLE"); ALCAN FOIL PRODUCTS ("FOIL"); USWA, LOCAL 7949 AND LOCAL 8754; IAM, LODGE 54 ..... (Mar./Apr.) 171

Evidence - Certification - Certification Where Act Contravened - Construction Industry - Intimidation and Coercion - Practice and Procedure - Remedies - Representation Vote - Union alleging that employer making certain threats and that union should be certified under section 11 of the Act - Employer asking Board to entertain subjective testimony of employees regarding whether they felt able to vote freely and whether their own votes reflected their true wishes regarding union representation - Board ruling that proffered evidence not relevant and inadmissible - Board finding that employer's sharing of its "economic analysis" with its employees was not a legitimate exercise of free speech, but designed to intimidate and coerce employees - Board finding that four statutory pre-conditions to certification under section 11 of the Act met - Certificates issuing

JAK ELECTRICAL CONTRACTORS LIMITED; RE IBEW, LOCAL 353 ..... (July/August) 578

Evidence - Certification - Construction Industry - Membership Evidence - Parties - Practice and Procedure - Representation Vote - IBEW Local 1687 applying to represent certain construction electricians employed by Ontario Hydro - Board earlier conducting pre-hearing representation vote and sealing box - Board concluding that PWU has no standing to participate further in proceeding as of right and that there is no reason to grant standing in exercise of Board's discretion - Board not satisfied that membership evidence filed by PWU conferring sufficient representational authority to permit PWU to participate in IBEW application - Board not persuaded that PWU can be permitted to rely on its collective agreement with Ontario Hydro as basis for standing - Board finding no justification to give PWU amicus curiae status - Board also deciding against opening sealed ballot box and counting ballots - Board directing hearing with respect to remaining outstanding issues

ONTARIO HYDRO; RE IBEW, LOCAL 1687; RE POWER WORKERS' UNION, CUPE LOCAL 1000 (PWU), IBEW, LOCAL 1788, EPSCA, THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO (ECAO); RE GROUP OF EMPLOYEES ..... (July/August) 700

Evidence - Certification - Employee - Membership Evidence - Reconsideration - Representation Vote - Trade Union Status - Board finding that locals of UNITE and UNITE's Ontario District Council are inter-related organizations each of which has status of a trade union within the meaning of the Act - Employer and objecting employees asking Board to dismiss application

on grounds that application filed by District Council was accompanied by evidence of membership in International union - Board seeing no reason to overturn evidence of earlier finding regarding 40 percent "appearance" of support in applicant - Board allowing union to challenge employment status of two individuals for first time after the vote where their status was already in issue for other reasons and their ballots were already segregated

BLACK PHOTO CORPORATION; UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES ONTARIO DISTRICT COUNCIL; RE GROUP OF EMPLOYEES ..... (May/June)

347

Evidence - Certification - Judicial Review - Practice and Procedure - Union winning representation vote but employer asserting that certificate should not issue - Employer submitting that Board mistakenly determined that there was appearance of more than 40% union support and that vote should not have been directed - Board rejecting employer's argument and affirming its practice under Bill 7 of looking only at information provided by union with its application when determining existence of appearance of 40% support - Board also explaining its inclination, where possible, to count ballots so that "quick votes" under Bill 7 are followed by quick results - Certificate issuing - Application for judicial review dismissed by Divisional Court

CORPORATION OF THE CITY OF TORONTO, THE; RE CUPE, LOCAL 79 AND THE OLRB, AND R.O. MACDOWELL, CHAIR; AND H. PEACOCK, BOARD MEMBER; AND J.A. RUNDLE, BOARD MEMBER ..... (Jan./Feb.)

169

Evidence - Certification - Membership Evidence - Board holding that it may properly have regard to membership evidence in the form of combination cards which were signed between six months and one year prior to application date - Board directing representation vote

SUDBURY AND DISTRICT HEALTH UNIT; RE CUPE..... (Jan./Feb.)

139

Evidence - Certification - Practice and Procedure - Security Guards - Employer objecting to certification application brought by Steelworkers' union on ground that union admits to membership persons who are not guards - Statute requiring trade union to satisfy Board that no conflict of interest would result - Board concluding that rational and efficient conduct of proceedings make it appropriate for employer to call its evidence first

BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE USWA; RE INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 1962 ..... (Jan./Feb.)

1

Evidence - Charter of Rights and Freedoms - Constitutional Law - Construction Industry - Construction Industry Grievance - Discharge - Practice and Procedure - Construction labourer discharged by Ontario Hydro for possessing and smoking marijuana at work and grieving that discharge was without just cause - Union seeking to exclude certain evidence on Charter grounds - Board finding evidence to establish just cause apart from evidence sought to be excluded - Board, therefore, not making any decision on union's Charter arguments - Union claiming that grievor's drug use was rooted in drug dependency that should be treated as a disease or disability requiring accommodation, rather than discipline - Board not satisfied that evidence establishing that grievor addicted or that he had come to grips with his situation - Grievance dismissed

ONTARIO HYDRO AND THE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION; RE ONTARIO ALLIED CONSTRUCTION TRADES COUNCIL AND LIUNA, LOCAL 506.....(July/August)

680

Evidence - Discharge - Health and Safety - Practice and Procedure - Board declining to receive three letters authored by clinical psychologist tendered by applicant where applicant unprepared to produce letters' author for purposes of cross-examination - Applicant employee alleging unlawful reprisals under Occupational Health and Safety Act in connection with complaints of sexual

harassment made to Human Rights Commission - Events complained of occurring between 1992 and 1996 - Board exercising its discretion against inquiring into application

SAMMONS & CHANNER MEN'S CLOTHING; RE IRENE FRANK.....(Mar./Apr.) 256

Evidence - Health and Safety - Practice and Procedure - Board permitting applicant's representative to tape record proceedings subject to certain specific restrictions regarding use of the recording - Applicant employee alleging that he was harassed and discriminated against by his employer on the basis of his race and that he suffered reprisals for having exercised rights under the Occupational Health and Safety Act ("OHSA") - Board declining to hear proffered "factual" and opinion evidence to establish that racial harassment and discrimination may constitute a hazard under OHSA and that the Ontario Human Rights Commission ("OHRC") is failing to exercise its jurisdiction under the Human Rights Code - Board declining to inquire into application because application in essence a complaint about race discrimination and because that matter should be dealt with by OHRC - Application dismissed

TORONTO BOARD OF EDUCATION; RE SELWYN PIETERS; RE CUPE, LOCAL 134  
.....(May/June) 541

Final Offer Vote - Construction Industry - Reference - Minister of Labour referring question of certain individuals' eligibility to vote in final offer vote directed by Minister in respect of employers operating in road building sector of the construction industry - Union submitting that eligible voters should include union members who had worked in road building sector in recent past and who would be eligible to vote according to union's internal rules set out in union constitution and by-laws - Board advising Minister that, even in the construction industry, only employees of the employer are entitled to vote, and union members who were not employees in the bargaining units are not eligible to vote

ASSOCIATED CONTRACTING INC.; RE IUOE, LOCAL 793.....(Sept./Oct.) 813

Financial Statement - Remedies - Board finding that union's "unaudited" financial statement accompanied by Review Engagement Report prepared by chartered accountants not amounting to audited financial statement required by section 92 of the Act - Board directing union to file with the Board (and to deliver to the applicant) a copy of its audited financial statements verified by the affidavit of its treasurer

MARTIN, LOUIS; RE INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTSMEN, LOCAL 5.....(Nov./Dec.) 1030

First Contract Arbitration - Change in Working Conditions - Intimidation and Coercion - Interference in Trade Unions - Termination - Unfair Labour Practice - Board finding breach of statutory freeze in respect of failure to pay Christmas bonus, but not in respect of failure to hold annual Christmas party - Board finding employer's letter to employees coercive and designed to undermine union's bargaining authority, and that employer otherwise seeking to interfere with exercise of employees' rights by intimidation and coercion - Board finding that collective bargaining unsuccessful because of refusal of employer to recognize union's bargaining authority, because of uncompromising nature of employer's bargaining positions without justification, and because of failure to make reasonable and expeditious efforts to conclude a collective agreement - Board directing that first agreement be settled by arbitration and that pending termination application be dismissed

FORT WILLIAM CLINIC; RE SEU LOCAL 268 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O. AND C.L.C. ....(May/June) 406

First Contract Arbitration - Discharge - Strike - Unfair Labour Practice - Board's earlier direction that first contract be settled by arbitration ending strike - Union and employer disputing return to work obligations - Board making various preliminary rulings at parties' request - Board not accepting union's argument that section 43(14)(b) gives senior employees the right to be returned to any work that they are able to do, even if it is not the same work that they were



performing before the strike started - Board finding that section 43(14) applies to require employer to reinstate all employees by seniority, regardless of whether or not they were working at the time the first contract direction was issued - Board rejecting union's argument that section 43(14) provides a guarantee against discharge of striking employees in the event of a first contract direction - Board also finding no statutory basis for requiring employer to justify terminations on either just cause or cause standard per se

DOVER CORPORATION (CANADA) LIMITED, INDUSTRIAL DIVISION; RE NATIONAL AUTOMOBILE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) ..... (May/June)

396

First Contract Arbitration - Judicial Review - Natural Justice - Reconsideration - Unfair Labour Practices - Board earlier directing settlement of first collective agreement by arbitration - Employer seeking reconsideration of decision on grounds of reasonable apprehension of bias - Employer submitting that apprehension of bias arising because on or about the date of the Board's earlier decision, vice-chair of the panel entered into a retainer agreement with the Canadian Air Line Pilots Association (CALPA) - Employer also relying on fact that vice-chair had discussions with CALPA regarding the retainer prior to date of Board's decision - Board not agreeing that circumstances giving rise to reasonable apprehension of bias - Reconsideration request denied - Application for judicial review dismissed by Divisional Court

DOVER CORPORATION (CANADA) LIMITED INDUSTRIAL DIVISION; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA), BRIAN KELLER, KAREN BRENNAN AND LARRY BERTUZZI, AND THE OLRB ..... (Nov./Dec.)

1054

First Contract Arbitration - Natural Justice - Reconsideration - Unfair Labour Practice - Board earlier directing settlement of first collective agreement by arbitration - Employer seeking reconsideration of decision on grounds of reasonable apprehension of bias - Employer submitting that apprehension of bias arising because on or about the date of the Board's earlier decision, vice-chair of the panel entered into a retainer agreement with the Canadian Air Line Pilots Association (CALPA) - Employer also relying on fact that vice-chair had discussions with CALPA regarding the retainer prior to date of Board's decision - Board not agreeing that circumstances giving rise to reasonable apprehension of bias - Reconsideration request denied

DOVER CORPORATION (CANADA) LIMITED INDUSTRIAL DIVISION; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) ..... (July/August)

568

First Contract Arbitration - Practice and Procedure - Ratification and Strike Vote - Representation Vote - Termination - Reconsideration - Subsequent to union filing application for first contract arbitration, group of employees applying to terminate bargaining rights - Board directing representation vote and directing that ballot box be sealed - Board also directing that termination application be heard with first contract application - On first day of hearing, employer signing union's proposed collective agreement and asking that first contract application be terminated as moot - Board finding that parties had 'effected a first collective agreement' - Board adjourning union's application and directing that proposed collective agreement be put to ratification vote - Union's application for reconsideration dismissed - Employees ratifying collective agreement, but Board declining to accept ratification vote as expression of employee wishes on termination application - Board directing parties to file submissions regarding status of first contract application and termination application

NATIVE CHILD AND FAMILY SERVICES OF TORONTO; RE CUPE AND ITS LOCAL 3875 ..... (Nov./Dec.)

1032

First Contract Arbitration - Practice and Procedure - Representation Vote - Termination - Employees submitting termination application while first contract application pending before Board - First contract application scheduled for hearing commencing two weeks hence - Decision as to

- whether or not to order representation vote and, if so, when, to be determined by panel hearing first contract application
- INGERSOLL PLASTICS INC.; RE DAVID PENTLAND; RE LIUNA, LOCAL 1059 AFFILIATED WITH A.F. OF L. - C.I.O. - C.L.C. O.F.L. .... (Mar./Apr.) 233
- First Contract Arbitration - Practice and Procedure - Representation Vote - Termination - Parties agreeing to adjourn first contract application sine die before any hearing - Five months later, union asking for application to be listed for hearing - Employees filing termination application one month after union's request and three weeks before first contract application scheduled to be heard - Board not ordering representation vote and deferring consideration of termination application until first contract application decided
- INGERSOLL PLASTICS INC.; RE DAVID PENTLAND; RE LIUNA, LOCAL 1059 AFFILIATED WITH A.F. OF L. - C.I.O. - C.L.C., O.F.L. .... (May/June) 463
- First Contract Arbitration - Practice and Procedure - Termination - Board earlier deciding to hear first contract application first and to defer consideration of termination application - After several days of hearing, employer and union settling first contract application on basis of consent order directing settlement of first collective agreement by arbitration - Board dismissing termination application pursuant to section 43(23) of the Act
- EAST SIDE MARIO'S, BIRSSA HOLDINGS INC. C.O.B. AS; RE LYNDIA ANN FALVO; RE UFCW, LOCALS 175/633 ..... (July/August) 574
- First Contract Arbitration - Practice and Procedure - Termination - On first day of hearing into union's application for first contract arbitration, employer advising that it was prepared to sign proposed collective agreement included in union's application - Employer asking Board to dismiss union's application for first contract arbitration - Union claiming, inter alia, that proposed collective agreement included in its application was not an "offer" as such, that it had evaporated over the 5-month period from the date that it had been filed, and had been extinguished by the filing of a termination application by employees - Board deciding that it ought to determine whether "process of collective bargaining has been unsuccessful" in context of all of the evidence - Board declining to adjourn or dismiss union's application at preliminary stage
- INGERSOLL PLASTICS INC.; RE LIUNA, LOCAL 1059; RE DAVID PENTLAND ..... (Nov./Dec.) 996
- Fraud - Certification - Constitutional Law - Charter of Rights and Freedoms - Employer asserting that certificate ought not to issue, despite union having won representation vote, because union allegedly knowingly misrepresented number of employees in proposed bargaining unit so as to put union in vote position - Employer arguing that misrepresentation amounting to fraud - Union submitting that section 64 of the Act not applying because no certificate yet obtained and that employer not making out prima facie case of fraud - Board declaring that union entitled to certificate - Board rejecting submission that union required to exercise due diligence in providing Board with estimate of number of employees in unit, but listing matter for hearing on issue of whether certificate obtained by fraud - Board also rejecting submission that Charter rights denied because notices and ballots provided only in English and French and not in other languages of workplace
- R-THETA INC.; RE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS..... (Jan./Feb.) 116
- Health and Safety - Applicant working as counsellor in health clinic and asserting that excessive workload and/or work-related stress should be construed as a hazard under the Occupational Health and Safety Act (OHSA) - Applicant alleging that she was fired for engaging in work refusal - Board concluding that applicant had no right to refuse work under OHSA and that decision to terminate her employment not motivated in any way by having engaged in work refusal - Application alleging contravention of section 50(1) of the Act dismissed - Board also

declining to exercise its discretion under section 50(7) of the Act to modify penalty in absence of good policy reason to interfere with proportionate employer response to applicant's conduct

CENTRO DONNE INC.; RE RUTH KIDANE..... (Jan./Feb.) 9

Health and Safety - Arbitration - Union representing Crown employee filing complaint alleging unlawful reprisal contrary to Occupational Health and Safety Act (OHSA) and Smoking in the Workplace Act - Employer asserting that Labour Relations Board not having jurisdiction because employee had earlier elected to have subject matter of complaint heard by Grievance Settlement Board - Board not accepting union's submission that section 50(6) of OHSA gives Labour Relations Board exclusive jurisdiction where the complainant is a Crown employee - Board accepting employer's submission regarding effect of employee's election - Application dismissed

CROWN IN RIGHT OF ONTARIO (MINISTRY OF THE SOLICITOR GENERAL AND CORRECTIONAL SERVICES), THE AND I. HADDEN, A. DVORAK, R. LUNDY; RE OPSEU, BILL WALLS ..... (July/August) 562

Health and Safety - Discharge - Applicant alleging that she was fired as a result of complaints of sexual harassment and that in making those complaints she was exercising rights under the Occupational Health and Safety Act - Board concluding that applicant's termination was not motivated by complaints of harassment - Application dismissed

LYNDHURST HOSPITAL; RE PAULINE AU ..... (July/August) 616

Health and Safety - Discharge - Evidence - Practice and Procedure - Board declining to receive three letters authored by clinical psychologist tendered by applicant where applicant unprepared to produce letters' author for purposes of cross-examination - Applicant employee alleging unlawful reprisals under Occupational Health and Safety Act in connection with complaints of sexual harassment made to Human Rights Commission - Events complained of occurring between 1992 and 1996 - Board exercising its discretion against inquiring into application

SAMMONS & CHANNER MEN'S CLOTHING; RE IRENE FRANK ..... (Mar./Apr.) 256

Health and Safety - Discharge - Judicial Review - Reconsideration - Applicant asserting that she was twice injured at work, that the injuries were reported to her employer, and that on one occasion she sought, and obtained, an assignment of lighter duties to accommodate her injury - Applicant subsequently released from employment during probation and alleging unlawful reprisal contrary to Occupational Health and Safety Act - Board dismissing application for failure to make out prima facie case - Applicant's reconsideration request denied - Application for judicial review dismissed by Divisional Court

HORIZON PLASTICS COMPANY LIMITED, UFCW AND OLRB; RE SHELLY STILES ..... (Nov./Dec.) 1066

Health and Safety - Evidence - Practice and Procedure - Board permitting applicant's representative to tape record proceedings subject to certain specific restrictions regarding use of the recording - Applicant employee alleging that he was harassed and discriminated against by his employer on the basis of his race and that he suffered reprisals for having exercised rights under the Occupational Health and Safety Act ("OHSA") - Board declining to hear proffered "factual" and opinion evidence to establish that racial harassment and discrimination may constitute a hazard under OHSA and that the Ontario Human Rights Commission ("OHRC") is failing to exercise its jurisdiction under the Human Rights Code - Board declining to inquire into application because application in essence a complaint about race discrimination and because that matter should be dealt with by OHRC - Application dismissed

TORONTO BOARD OF EDUCATION; RE SELWYN PIETERS; RE CUPE, LOCAL 134 ..... (May/June) 541



Health and Safety - Natural Justice - Practice and Procedure - Applicant's request that vice-chair remove himself on grounds of bias dismissed - Applicant alleging that her experience of workplace harassment and continuing discrimination on basis of race amounting to unlawful reprisal contrary to Occupational Health and Safety Act (OHSA) - Board earlier referring applicant to Board's decisions in Meridian and Toronto Board of Education - Applicant directed to show cause why Board ought not to exercise its discretion against inquiring into application - Applicant submitting that Board should hear application for various reasons, including decision made by Human Rights Commission to exercise its discretion to decline to inquire into complaint brought there on basis that complaint was more appropriately dealt with elsewhere - Board noting that applicant's complaint principally about about race discrimination and that reasoning of Meridian case and Toronto Board of Education case was appropriately applied - Board unwilling to allow Commission to decide how Board's discretion to inquire under section 50(3) of OHSA should be exercised - Application dismissed

TORONTO HYDRO; RE HELEN LEE .....(Nov./Dec.) 1050

Health and Safety - Remedies - Applicant employees alleging unlawful reprisal in form of two-week suspensions imposed as result of work refusal - Board finding that employees not having genuine health and safety concern regarding increased speed on production line - Board also satisfied that employees did not have reasonable basis for honest belief that they or other workers were endangered - Board, however, exercising discretion under subsection 50(7) of the Act to substitute five-day and one-day suspensions for two-week suspensions imposed by employer

GENERAL MOTORS OF CANADA LIMITED, ROBERT TAYLOR, DON SAWYER AND;  
RE JOHN SELLERS, MARIO ROMAGNUOLO, GERALD PELLEY AND CAW LOCAL  
222 .....(Mar./Apr.) 223

Hospital Labour Disputes Arbitration Act - Certification - Timeliness - Canadian Health Care Workers seeking to displace London & District Service Workers Union, Local 220 as bargaining agent for certain employees - Most recent collective agreement between employer and incumbent union expired in 1992 - Board of Arbitration issuing award covering January 1, 1993 to December 31, 1994 period in January 1997 - Award dated November 1996 - Award remitting lay-off issue to parties for further negotiation and Board of Arbitration remaining seized - Whether certification application timely under provisions of HLDAA - Board finding that award not deciding matters in dispute and that 90 day extension under subsection 10(12) of HLDAA not yet triggered - Certification application dismissed as premature and untimely

CORPORATION OF THE CITY OF ST. THOMAS, THE; RE CANADIAN HEALTH CARE  
WORKERS; RE LONDON & DISTRICT SERVICE WORKERS' UNION, LOCAL 220  
.....(May/June) 373

Hospital Labour Disputes Arbitration Act - Certification - Timeliness - Incumbent union and employer subject to provisions of Hospital Labour Disputes Arbitration Act - Raiding union filing certification application almost two years after expiry of most recent collective agreement, 19 months after appointment of conciliation officer and 17 months after Minister of Labour advising employer and incumbent union that conciliation officer had reported that the parties had been unable to effect collective agreement - Application dismissed as untimely

TRINITY VILLAGE CARE CENTER; RE CANADIAN HEALTH CARE WORKERS  
(C.H.C.W.); RE LONDON & DISTRICT SERVICE WORKERS' UNION, LOCAL 220,  
S.E.I.U., A.F.L., C.I.O., C.L.C. ....(Mar./Apr.) 296

Hospital Labour Disputes Arbitration Act - Reference - Board not accepting submission that Board ought not to answer question posed in Minister's reference on grounds of res judicata or issue estoppel or abuse of process - Employer providing "independent living" services to physically disabled adults living in three housing projects - Employer also offering outreach services to

clients living in their own homes - Board finding employer to be a "hospital" within meaning of Hospital Labour Disputes Arbitration Act

BELLWOODS CENTRE FOR COMMUNITY LIVING INC.; RE SEIU, LOCAL 204  
..... (May/June)

331

Hospital Labour Disputes Arbitration Act - Reference - Employer submitting that 'retirement living centre' ought not to be found to be 'hospital' on ground that services provided by it to residents would not be significantly disturbed by a strike - Board finding that employer providing accommodation, observation, assessment and supervision of its aged residents and that that is sufficient to be regarded as a 'home for the aged' and therefore a 'hospital' within the meaning of the Hospital Labour Disputes Arbitration Act

MEADOWCROFT HOLDINGS INC., C.O.B. AS EXECU-CARE NURSING SERVICES,  
KITCHENER MEADOWCROFT LIMITED PARTNERSHIP AND 5M MANAGEMENT  
SERVICES LIMITED; RE LONDON AND DISTRICT SERVICES WORKERS' UNION,  
LOCAL 220..... (Jan./Feb.)

74

Hospital Labour Disputes Arbitration Act - Remedies - Sale of a Business - Parties agreeing that merger of hospitals constituting sale of a business, that the relevant bargaining units be merged, and that a representation vote between the incumbent unions be held to determine the new bargaining agent - Board ruling that collective agreement of winning union applies to all of the employees in the bargaining unit after a vote held under section 69(8) of the Act - Board determining that because all the bargaining units are covered by the statutory "freeze", the Board's declarations under section 69(4) of the Act should be made retroactive to the date of application

WEST PARRY SOUND HEALTH CENTRE; RE CUPE, LOCAL 1473, OPSEU, LOCAL 320  
AND SEU, LOCAL 478.....(July/August)

794

Interest Arbitration - Change in Working Conditions - Discharge - Discharge for Union Activity - Practice and Procedure - Unfair Labour Practice - Board earlier directing that first collective agreement between parties be settled by arbitration - Union alleging that employer unlawfully discharged 4 employees shortly after Board's first contract direction - Employer asserting that union had elected to have matter of discharges dealt with by interest arbitration board seized of the contract dispute and that unfair labour practice application should accordingly be dismissed - Board rejecting employer's request to dismiss (without prejudice to employer's right to argue how Board ought to proceed in view of whatever the award of the interest board may be) - Board, however, deferring further consideration of application to next hearing dates scheduled 7 weeks hence (by which time results of interest arbitration may be known to the parties)

DOVER CORPORATION (CANADA) LIMITED, INDUSTRIAL DIVISION; RE NA-  
TIONAL AUTOMOBILE, TRANSPORTATION AND GENERAL WORKERS UNION OF  
CANADA (CAW-CANADA) .....(Nov./Dec.)

994

Interest Arbitration - Collective Agreement - Parties - Practice and Procedure - Unfair Labour Practice - Union alleging that employer violating the Act because of its refusal to execute or implement first collective agreement as directed by board of arbitration - Employer asserting that board of arbitration exceeded its jurisdiction and that its award is a nullity - Employer asserting same position in pending judicial review application of arbitration award - Board determining that bargaining unit employees not entitled to notice or to participate in Board proceeding - Board doubting its jurisdiction to sit in review of board of arbitration process - Board, in any event, exercising its discretion not to inquire into complaint because fundamental issue between the parties best dealt with by the Court in judicial review application - Application dismissed

GREENBERG STORES LIMITED; RE USWA ..... (Jan./Feb.)

61

- Interference in Trade Unions - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Intimidation and Coercion - Remedies - Unfair Labour Practice - Employer threatening to shut plant and move to United States if union certified - Board certifying union under section 11 of the Act - Board directing reinstatement of inside union organizer who resigned position because he thought that he would be dismissed following union's loss in representation vote
- TILL-FAB LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS' UNION OF CANADA (CAW) .....(Nov./Dec.) 1047
- Interference in Trade Unions - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Judicial Review - Unfair Labour Practice - Board finding that employer violated the Act in promoting an employee association in the face of the union organizing campaign and in indefinitely suspending the lead inside union organizer - Board certifying union under section 11(1) of the Act - Application for judicial review dismissed by Divisional Court
- BURLINGTON GOLF & COUNTRY CLUB LIMITED; RE CANADIAN UNION OF OPERATING ENGINEERS AND GENERAL WORKERS AND THE OLRB.....(Mar./Apr.) 299
- Interference in Trade Unions - Change in Working Conditions - First Contract Arbitration - Intimidation and Coercion - Termination - Unfair Labour Practice - Board finding breach of statutory freeze in respect of failure to pay Christmas bonus, but not in respect of failure to hold annual Christmas party - Board finding employer's letter to employees coercive and designed to undermine union's bargaining authority, and that employer otherwise seeking to interfere with exercise of employees' rights by intimidation and coercion - Board finding that collective bargaining unsuccessful because of refusal of employer to recognize union's bargaining authority, because of uncompromising nature of employer's bargaining positions without justification, and because of failure to make reasonable and expeditious efforts to conclude a collective agreement - Board directing that first agreement be settled by arbitration and that pending termination application be dismissed
- FORT WILLIAM CLINIC; RE SEU LOCAL 268 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O. AND C.L.C. ....(May/June) 406
- Interference in Trade Unions - Unfair Labour Practice - Board noting that union's pleadings, even if accepted, not clearly pointing to any prohibited conduct on part of employer - Board also observing that all of the circumstances making up the union's complaint already part of the record in related arbitration proceeding - Board declining to inquire into unfair labour practice complaint where problem identified by union not a labour relations problem and where no labour relations purpose would be served by generating further layer of litigation between the parties - Application dismissed
- SIEMENS ELECTRIC LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 35.....(Mar./Apr.) 279
- Interference in Trade Unions - Unfair Labour Practice - Union asserting that employer deducted dues totalling \$35,000 from employees which were never remitted to union - Employer placed in receivership and later declaring bankruptcy - Union filing unfair labour practice complaint against various receivers and secured creditors of employer and claiming that they have interfered in administration of union by failing to remit dues already deducted from employees - Board not satisfied that respondents fairly characterized as "persons acting on behalf of employer" - Board also concluding that unremitted dues amounting to "claim provable in



bankruptcy” within meaning of Bankruptcy and Insolvency Act (BIA), and that union’s application barred by section 69.3 of BIA - Union’s unfair labour practice complaint dismissed

CANADIAN IMPERIAL BANK OF COMMERCE, NORTH AMERICAN TRUST COMPANY, ALLSTATE INSURANCE COMPANY OF CANADA, CHARLES R. MCDONALD, WILLIAM PASCOE, CLIFFORD N. SUTTS, ARIC J. RUSK AND BDO DUNWOODY LIMITED, DAVIS MARTINDALE AND COMPANY INC., COOPERS & LYBRAND LIMITED; RE CAW-CANADA..... (May/June)

371

Interim Relief - Duty to Bargain in Good Faith - Remedies - Unfair Labour Practice - On eve of strike, employer unilaterally transferring seven bargaining unit positions outside of bargaining unit - Union filing unfair labour practice complaint and asking for interim order requiring employer to continue to recognize union as exclusive bargaining agent for the seven individuals holding the disputed positions - Board concluding that balance of harm weighing in favour of union - Application for interim order granted pending disposition or resolution of unfair labour practice complaint

REGIONAL MUNICIPALITY OF NIAGARA, THE; RE CUPE, LOCAL 1287..(July/August)

733

Interim Relief - Duty to Bargain in Good Faith - Remedies - Unfair Labour Practice - Union alleging that employer’s failure to provide certain financial and other information violating duty to bargain - Board making interim order under section 98 of the Act directing production of information and setting out mechanism for its collection

METRO CAB COMPANY LIMITED AND METRO CABS ASSOCIATES’ COMMITTEE REPRESENTING ASSOCIATES OF METRO CAB COMPANY LIMITED; RE RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE USWA AND LOCAL 1688 THE ONTARIO TAXI UNION..... (May/June)

474

Intimidation and Coercion - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board finding lay-off of union supporter improperly motivated and unlawful - Board finding that certain statements of employer reasonably perceived as threats to employment - Board issuing cease and desist order and directing that damages be paid to discharged employee - Board also certifying union under section 11 of the Act

MARSIL MECHANICAL INC. (“MARSIL”); RE ONTARIO PIPE TRADES COUNCIL OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (“O.P.C.”) AND THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (“U.A.”) .....(Sept./Oct.)

900

Intimidation and Coercion - Certification - Certification Where Act Contravened - Construction Industry - Evidence - Practice and Procedure - Remedies - Representation Vote - Union alleging that employer making certain threats and that union should be certified under section 11 of the Act - Employer asking Board to entertain subjective testimony of employees regarding whether they felt able to vote freely and whether their own votes reflected their true wishes regarding union representation - Board ruling that proffered evidence not relevant and inadmissible - Board finding that employer’s sharing of its “economic analysis” with its employees was not a legitimate exercise of free speech, but designed to intimidate and coerce employees - Board finding that four statutory pre-conditions to certification under section 11 of the Act met - Certificates issuing

JAK ELECTRICAL CONTRACTORS LIMITED; RE IBEW, LOCAL 353 .....(July/August)

578

Intimidation and Coercion - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Interference in Trade Unions - Remedies - Unfair Labour Practice - Employer threatening to shut plant and move to United States if union certified -

Board certifying union under section 11 of the Act - Board directing reinstatement of inside union organizer who resigned position because he thought that he would be dismissed following union's loss in representation vote

TILL-FAB LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS' UNION OF CANADA (CAW) .....(Nov./Dec.)

1047

Intimidation and Coercion - Change in Working Conditions - First Contract Arbitration - Interference in Trade Unions - Termination - Unfair Labour Practice - Board finding breach of statutory freeze in respect of failure to pay Christmas bonus, but not in respect of failure to hold annual Christmas party - Board finding employer's letter to employees coercive and designed to undermine union's bargaining authority, and that employer otherwise seeking to interfere with exercise of employees' rights by intimidation and coercion - Board finding that collective bargaining unsuccessful because of refusal of employer to recognize union's bargaining authority, because of uncompromising nature of employer's bargaining positions without justification, and because of failure to make reasonable and expeditious efforts to conclude a collective agreement - Board directing that first agreement be settled by arbitration and that pending termination application be dismissed

FORT WILLIAM CLINIC; RE SEU LOCAL 268 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O. AND C.L.C. ....(May/June)

406

Intimidation and Coercion - Construction Industry - Trusteeship - Unfair Labour Practice - Board finding that IBEW Local 1788 was engaged in reasonable dissent and declaring that IBEW had no just cause to impose trusteeship on its local - Board dismissing supervision of the local - Local's application under Bill 80 provisions of the Act allowed - IBEW's application to extend trusteeship dismissed

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND KEN WOODS; RE IBEW, LOCAL UNION 1788 .....(Nov./Dec.)

1022

Judicial Review - Certification - Certification Where Act Contravened - Charter of Rights - Constitutional Law - Representation Vote - Board concluding that conduct of employer in circulating amongst employees and engaging them in individual and group discussions regarding the union violating section 70 of the Act - Employer's refusal to answer questions regarding closing of store if union certified amounting to intentionally generated implied threat to employees' job security and also violating the Act - Board concluding that results of representation vote not disclosing employees' true wishes, that no remedy short of automatic certification sufficient to counter effect of employer contraventions, and that union holding membership support sufficient for collective bargaining - Union certified under section 11 of the Act - Applications for judicial review brought by employer and by objecting employees dismissed by Divisional Court

WAL-MART CANADA INC.; RE USWA AND THE OLRB; RE TIZIANI ALFINI ET AL.; RE OLRB, JANICE JOHNSTON, VICE-CHAIR, H. PEACOCK, BOARD MEMBER R.W. PIRRIE, BOARD MEMBER AND USWA .....(July/August)

810

Judicial Review - Certification - Certification Where Act Contravened - Charter of Rights - Constitutional Law - Representation Vote - Board concluding that conduct of employer in circulating amongst employees and engaging them in individual and group discussions regarding the union violating section 70 of the Act - Employer's refusal to answer questions regarding closing of store if union certified amounting to intentionally generated implied threat to employees' job security and also violating the Act - Board concluding that results of representation vote not disclosing employees' true wishes, that no remedy short of automatic certification sufficient to counter effect of employer contraventions, and that union holding membership support sufficient for collective bargaining - Union certified under section 11 of the Act - Applications for

judicial review brought by employer and by objecting employees dismissed by Divisional Court - Application for leave to appeal dismissed by Court of Appeal

WAL-MART CANADA INC.; RE USWA AND THE ONTARIO LABOUR RELATIONS BOARD ..... (Sept./Oct.) 963

Judicial Review - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Interference in Trade Unions - Unfair Labour Practice - Board finding that employer violated the Act in promoting an employee association in the face of the union organizing campaign and in indefinitely suspending the lead inside union organizer - Board certifying union under section 11(1) of the Act - Application for judicial review dismissed by Divisional Court

BURLINGTON GOLF & COUNTRY CLUB LIMITED; RE CANADIAN UNION OF OPERATING ENGINEERS AND GENERAL WORKERS AND THE OLRB..... (Mar./Apr.) 299

Judicial Review - Certification - Construction Industry - Employee - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application for judicial review brought by objecting individual dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED, ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER ..... (Mar./Apr.) 298

Judicial Review - Certification - Construction Industry - Employee - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application to have judicial review application heard by single judge on grounds of urgency and motion to stay decision of the Board dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED; MICHAEL BAUER RE OLRB, IBEW, LOCAL 353..... (Jan./Feb.) 169



Judicial Review - Certification - Construction Industry - Employee - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Objecting individual seeking judicial review and filing three affidavits in support of application - Motions' court judge holding affidavits inadmissible and ordering them struck out

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED,  
ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER ..... (Mar./Apr.)

297

Judicial Review - Certification - Construction Industry - Reconsideration - Trade Union - Power Workers' Union (PWU) seeking to displace International Brotherhood of Electrical Workers (IBEW) in several bargaining units - Board concluding that PWU not a construction "trade union" within meaning of section 126 of the Act and therefore not entitled to bring its certification applications - Applications for certification and request for reconsideration dismissed - PWU applying for judicial review - Motions Court judging striking out portion of affidavit and factum filed by PWU

ONTARIO HYDRO, G.T. SURDYKOWSKI, OLRB, IBEW, LOCAL 1788, IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO, IBEW, LOCAL 105, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, THE IBEW CONSTRUCTION COUNCIL OF ONTARIO, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1687, ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION AND ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO; RE PWU, CUPE, LOCAL 1000..... (Nov./Dec.)

1066

Judicial Review - Certification - Employee - Board finding that thirteen lead hands employed at employer's production facility exercising managerial functions and not "employees" for purposes of the Act - Certificate issuing - Application for judicial review dismissed by Divisional Court

GOURMET BAKER INC.; RE USWA AND THE OLRB ..... (Mar./Apr.)

303

Judicial Review - Certification - Evidence - Practice and Procedure - Union winning representation vote but employer asserting that certificate should not issue - Employer submitting that Board mistakenly determined that there was appearance of more than 40% union support and that vote should not have been directed - Board rejecting employer's argument and affirming its practice under Bill 7 of looking only at information provided by union with its application when determining existence of appearance of 40% support - Board also explaining its inclination, where possible, to count ballots so that "quick votes" under Bill 7 are followed by quick results - Certificate issuing - Application for judicial review dismissed by Divisional Court

CORPORATION OF THE CITY OF TORONTO, THE; RE CUPE, LOCAL 79 AND THE OLRB, AND R.O. MACDOWELL, CHAIR; AND H. PEACOCK, BOARD MEMBER; AND J.A. RUNDLE, BOARD MEMBER ..... (Jan./Feb.)

169

- Judicial Review - Collective Agreement - Construction Industry - Ratification and Strike Vote - Memorandum of settlement between union and employer in construction industry made contingent on ratification - Union submitting agreement to union's accredited delegates and not to employees in the bargaining unit - Board dismissing complaint alleging that provisions of section 79 of the Act requiring employee ratification in these circumstances - Application for judicial review dismissed by Divisional Court as premature
- INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, KEN WOODS, ALLAN DIGGON, TOM MCGREEVY AND IBEW, LOCAL 1788 BY ITS TRUSTEE, IBEW AND ONTARIO HYDRO AND EPSCA AND IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO, OLRB; RE POWER WORKERS' UNION - CUPE, LOCAL 1000 AND J. CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L. CRAUSEN, H.R. GILLIES, R.C. HANSEN, G. O'DONNELL, J. STARK, R. THOMS, H. TOMSETT AND R.R. YOUNG ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF THE IBEW, LOCAL 1788..... (May/June) 557
- Judicial Review - Collective Agreement - Parties - Termination - Timeliness - Board dismissing application to terminate bargaining rights after finding that document executed between union and employer was "collective agreement" - Application not brought during last two months of collective agreement and, therefore, untimely - Employer applying for judicial review - Divisional Court holding that employer without status to seek review of Board's decision - Judicial review application dismissed
- CANADIAN WILDLIFE FEDERATION; RE JAN BUREAU AND VICKI PAGE, ON THEIR OWN BEHALF AND ON BEHALF OF A GROUP OF EMPLOYEES OF THE CANADIAN WILDLIFE FEDERATION, USWA, LOCAL 8327, OLRB ..... (May/June) 555
- Judicial Review - Discharge - Discharge for Union Activity - Reconsideration - Unfair Labour Practice - Board exercising its discretion not to inquire into unfair labour practice complaint where substance of complaint and of grievances at arbitration overlapped, where allegation of anti-union motivation was before arbitration board and where arbitration board had complete jurisdiction to inquire into matter - Complaint dismissed - Request for reconsideration dismissed - Application for judicial review dismissed by Divisional Court
- DEMETRIADES, JOHN; RE OLRB AND ST. JOSEPH'S HEALTH CENTRE..... (May/June) 556
- Judicial Review - Discharge - Health and Safety - Reconsideration - Applicant asserting that she was twice injured at work, that the injuries were reported to her employer, and that on one occasion she sought, and obtained, an assignment of lighter duties to accommodate her injury - Applicant subsequently released from employment during probation and alleging unlawful reprisal contrary to Occupational Health and Safety Act - Board dismissing application for failure to make out prima facie case - Applicant's reconsideration request denied - Application for judicial review dismissed by Divisional Court
- HORIZON PLASTICS COMPANY LIMITED, UFCW AND OLRB; RE SHELLY STILES ..... (Nov./Dec.) 1066
- Judicial Review - Duty of Fair Representation - Unfair Labour Practice - Board declining to inquire into duty of fair representation complaint in view of passage of time from critical events, applicant's delay in raising his concerns with the union and the Board, the likelihood of success of the complaint and the utility of any remedy that might flow - Application for judicial review dismissed by Divisional Court
- GOEL, BHARAT; RE OLRB AND YORK UNIVERSITY STAFF ASSOCIATION ..... (Nov./Dec.) 1065
- Judicial Review - First Contract Arbitration - Natural Justice - Reconsideration - Unfair Labour Practices - Board earlier directing settlement of first collective agreement by arbitration - Employer seeking reconsideration of decision on grounds of reasonable apprehension of bias -

- Employer submitting that apprehension of bias arising because on or about the date of the Board's earlier decision, vice-chair of the panel entered into a retainer agreement with the Canadian Air Line Pilots Association (CALPA) - Employer also relying on fact that vice-chair had discussions with CALPA regarding the retainer prior to date of Board's decision - Board not agreeing that circumstances giving rise to reasonable apprehension of bias - Reconsideration request denied - Application for judicial review dismissed by Divisional Court
- DOVER CORPORATION (CANADA) LIMITED INDUSTRIAL DIVISION; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA), BRIAN KELLER, KAREN BRENNAN AND LARRY BERTUZZI, AND THE OLRB .....(Nov./Dec.) 1064
- Jurisdictional Dispute - Construction Industry - Board holding that operation of eight ton Pitman type boom truck crane in Board Area #21 is work of the Operating Engineers
- BENNETT & WRIGHT GROUP AND UA LOCAL 508; RE IUOE, LOCAL 793 .(Nov./Dec.) 967
- Jurisdictional Dispute - Construction Industry - Carpenters' union and Labourers' union disputing assignment of work in connection with: installation of bolts, ties and other miscellaneous metal attached to forms; installation of neoprene rubber on expansion joints; fabrication and installation of scaffolding, platforms and attached safety rails forming part of formwork; placing, erecting and rough adjusting of column forms; and placing and assembly of shoring frames, screw jacks, U heads, stringers, joists, plywood and bracing - Board upholding employer's assignment of disputed work to composite crew of Carpenters and Labourers
- RILI CONSTRUCTION WESTON LTD. AND LIUNA, LOCAL 837; RE CJA, LOCAL 18 .....(Nov./Dec.) 1044
- Jurisdictional Dispute - Construction Industry - Construction Industry Grievance - Damages - Remedies - Board earlier resolving jurisdictional dispute complaint involving Painters' union in favour of Labourers' union - Labourers' seeking damages as result of improper assignment - Board following *Robertson-Yates* and *Sawyers & Associates* decisions - Board declining to award damages on basis that assignment of work to Painters' union was not unreasonable
- ELLIS-DON LIMITED; RE LIUNA, LOCAL 247 .....(Mar./Apr.) 202
- Jurisdictional Dispute - Construction Industry - Ironworkers' union and Carpenters' union disputing assignment of certain work in connection with installation of removable steel molds and accompanying steel supports for iron runner box at steel mill, including off-loading, rigging, moving, handling, fabrication, cutting, welding, fitting and bolting work - Board finding that work properly assigned to Ironworkers' union
- JADDCO ANDERSON LIMITED, CJA, LOCAL 446; RE IRON WORKERS DISTRICT COUNCIL OF ONTARIO INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 786 .....(Mar./Apr.) 234
- Jurisdictional Dispute - Construction Industry - Labourers' union and Carpenters' union disputing assignment of work of tending carpenters working on scaffolding and supervision of such work - Board satisfied that Labourers have tending (of carpenters engaged in scaffolding work) work jurisdiction in the relevant geographic area - Board requiring assignment of at least one construction labourer to tend carpenters on all five scaffolding jobs in issue and permitting employer to add additional labourers to tend carpenters as it considers appropriate - Board making no order with respect to supervision of work in dispute
- DOUG CHALMERS CONSTRUCTION LIMITED; RE LIUNA, LOCAL 1089; RE CJA, LOCAL 1256 .....(May/June) 385
- Jurisdictional Dispute - Construction Industry - Parties - Practice and Procedure - Local 721 of Ironworkers' Union and Local 793 of Operating Engineers' union disputing assignment of



certain work involving operation of cranes and fork-lifts used at car assembly plant in connection with removal and reinstallation of equipment for new production assembly line - Work in dispute had been subject of March 1997 arbitration decision under Canadian Plan for Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") - Employer and Local 793 asserting that Board ought not to entertain Local 721's application on basis that Plan had already issued decision - Local 721 not considering itself bound by the Plan and not participating in arbitration decision under the Plan - Board denying Plan intervenor status in Board proceeding - Board concluding that Local 721 not bound to the Plan in its own right or as result of actions of international union and that Local 721 accordingly not bound by arbitration decision - Board also determining that there is no basis to exercise its discretion against entertaining the application

RYCO ALBERICI AND IUOE, LOCAL 793; RE BSOIW, LOCAL 721 ..... (Sept./Oct.) 926

Jurisdictional Dispute - Construction Industry - Plumbers' union, Sheet Metal Workers' union, Millwrights' union, Ironworkers' union and Labourers' union disputing assignment of certain work involving uncrating and unpacking of equipment and dismantling and/or disposal of packaging material - Board ruling that work of uncrating equipment properly assigned to the trades and should not have been assigned to the Labourers - Where packaging material is dismantled and/or disposed of as equipment or machinery is being uncrated, work of dismantling and disposal of packaging material should be assigned to the trades - Where equipment or machinery is entirely uncrated, dismantling or disposal work should be assigned to Labourers' union

COMSTOCK CANADA LTD., AND LIUNA, LOCAL 1036; RE UA, LOCAL UNION 508 ..... (Sept./Oct.) 830

Jurisdictional Dispute - Construction Industry - Practice and Procedure - Board describing nature of onus in jurisdictional dispute complaints - Carpenters' union and Labourers' union disputing assignment of certain tending and clean-up work associated with erection of water cooling tower - Board concluding that work should have been assigned to Labourers' union

ECODYNE LIMITED; RE LIUNA, LOCAL 1036 ("LABOURERS") AND CJA, LOCAL 446 ("CARPENTERS") ..... (Mar./Apr.) 197

Jurisdictional Dispute - Construction Industry - Practice and Procedure - Timeliness - Carpenters' union asking Board to dismiss jurisdictional dispute complaint brought by Labourers' union on account of delay - Board not accepting applicant's desire to compile best case or lack of counsel resources to assist in that respect as sufficient reasons for 7 month delay - Application dismissed

WALTER AND SCI CONSTRUCTION (CANADA) LTD. AND CJA, LOCAL 446; RE LIUNA, LOCAL 1036 ..... (Sept./Oct.) 961

Jurisdictional Dispute - Construction Industry - Sheet Metal Workers' union and Carpenters' union disputing assignment of work in connection with handling and installation of wood blocking as part of installation of new built-up roofing system at automotive plant - Board upholding employer's assignment of disputed work to Sheet Metal Workers' union

SEMPLE-GOODER ROOFING LIMITED, BOTHWELL-ACCURATE CO. LTD. AND CJA, LOCAL 785; RE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 562 ..... (Nov./Dec.) 1046

Lock-Out - Related Employer - Remedies - Sale of a Business - Board not accepting submission that assignment in bankruptcy or that bankruptcy court orders should cause Board not to find sale of a business - Sale of a business and single employer declarations issuing - Board finding that successor employer's refusal to re-open plant closed by predecessor so long as employees there

- do not agree to concessions amounting to technical unlawful lock-out - Board declining to make cease and desist order in order to permit continuation of bargaining between the parties
- VULCAN CONTAINERS LTD. AND VULCAN CONTAINERS (ONTARIO) LTD., VULCAN PACKAGING INC.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 1008 .....(July/August) 765
- Membership Evidence - Certification - Construction Industry - Evidence - Parties - Practice and Procedure - Representation Vote - IBEW Local 1687 applying to represent certain construction electricians employed by Ontario Hydro - Board earlier conducting pre-hearing representation vote and sealing box - Board concluding that PWU has no standing to participate further in proceeding as of right and that there is no reason to grant standing in exercise of Board's discretion - Board not satisfied that membership evidence filed by PWU conferring sufficient representational authority to permit PWU to participate in IBEW application - Board not persuaded that PWU can be permitted to rely on its collective agreement with Ontario Hydro as basis for standing - Board finding no justification to give PWU *amicus curiae* status - Board also deciding against opening sealed ballot box and counting ballots - Board directing hearing with respect to remaining outstanding issues
- ONTARIO HYDRO; RE IBEW, LOCAL 1687; RE POWER WORKERS' UNION, CUPE LOCAL 1000 (PWU), IBEW, LOCAL 1788, EPSCA, THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO (ECAO); RE GROUP OF EMPLOYEES .....(July/August) 700
- Membership Evidence - Certification - Employee - Evidence - Reconsideration - Representation Vote - Trade Union Status - Board finding that locals of UNITE and UNITE's Ontario District Council are inter-related organizations each of which has status of a trade union within the meaning of the Act - Employer and objecting employees asking Board to dismiss application on grounds that application filed by District Council was accompanied by evidence of membership in International union - Board seeing no reason to overturn evidence of earlier finding regarding 40 percent "appearance" of support in applicant - Board allowing union to challenge employment status of two individuals for first time after the vote where their status was already in issue for other reasons and their ballots were already segregated
- BLACK PHOTO CORPORATION; UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES ONTARIO DISTRICT COUNCIL; RE GROUP OF EMPLOYEES ..... (May/June) 347
- Membership Evidence - Certification - Evidence - Board holding that it may properly have regard to membership evidence in the form of combination cards which were signed between six months and one year prior to application date - Board directing representation vote
- SUDBURY AND DISTRICT HEALTH UNIT; RE CUPE..... (Jan./Feb.) 139
- Membership Evidence - Certification - Practice and Procedure - Employer asking Board not to give effect to representation vote because no vote ought to have been ordered in the first place - Board affirming approach to determining "appearance" of 40 percent support described in *City of Toronto* case - In making that determination, Board to have regard only to membership evidence filed by union and to its estimate of the number of persons in its proposed bargaining unit - Certificate issuing
- HERCULES MOLDED PRODUCTS INC.; RE UFCW, AFL-CIO-CLC .....(Sept./Oct.) 866
- Natural Justice - Certification - Construction Industry - Employee - Judicial Review - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement)

in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application for judicial review brought by objecting individual dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED,  
ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER..... (Mar./Apr.)

298

Natural Justice - Certification - Construction Industry - Employee - Judicial Review - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application to have judicial review application heard by single judge on grounds of urgency and motion to stay decision of the Board dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED;  
MICHAEL BAUER RE OLRB, IBEW, LOCAL 353..... (Jan./Feb.)

169

Natural Justice - Certification - Construction Industry - Employee - Judicial Review - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Objecting individual seeking judicial review and filing three



affidavits in support of application - Motions' court judge holding affidavits inadmissible and ordering them struck out

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED,  
ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER.....(Mar./Apr.)

297

Natural Justice - Construction Industry - Unfair Labour Practice - Applicant asking vice-chair to disqualify himself on grounds of alleged reasonable apprehension of bias - Applicant relying on a series of decisions issued by vice-chair over previous four years which were decided against Applicant - Applicant's request dismissed

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS IN ITS OWN RIGHT  
ADN AS TRUSTEE AND KEN WOODS, ALLAN DIGGON, TOM MCGREEVY, ONTARIO  
HYDRO AND ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION  
("EPSCA"); RE POWER WORKERS' UNION - CUPE, LOCAL 1000 ("PWU") AND J.  
CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L. CRAUSEN, H.R. GILLIES, R.C.  
HANSEN, G. O'DONNELL, J. STARK, R. THOMS, H. TOMSETT AND R.R. YOUNG; RE  
THE IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO  
("IBEW-EPSCCO") .....(Nov./Dec.)

1005

Natural Justice - First Contract Arbitration - Judicial Review - Reconsideration - Unfair Labour Practices - Board earlier directing settlement of first collective agreement by arbitration - Employer seeking reconsideration of decision on grounds of reasonable apprehension of bias - Employer submitting that apprehension of bias arising because on or about the date of the Board's earlier decision, vice-chair of the panel entered into a retainer agreement with the Canadian Air Line Pilots Association (CALPA) - Employer also relying on fact that vice-chair had discussions with CALPA regarding the retainer prior to date of Board's decision - Board not agreeing that circumstances giving rise to reasonable apprehension of bias - Reconsideration request denied - Application for judicial review dismissed by Divisional Court

DOVER CORPORATION (CANADA) LIMITED INDUSTRIAL DIVISION; RE NATIONAL  
AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION  
OF CANADA (CAW-CANADA), BRIAN KELLER, KAREN BRENNAN AND LARRY  
BERTUZZI, AND THE OLRB .....(Nov./Dec.)

1064

Natural Justice - First Contract Arbitration - Reconsideration - Unfair Labour Practice - Board earlier directing settlement of first collective agreement by arbitration - Employer seeking reconsideration of decision on grounds of reasonable apprehension of bias - Employer submitting that apprehension of bias arising because on or about the date of the Board's earlier decision, vice-chair of the panel entered into a retainer agreement with the Canadian Air Line Pilots Association (CALPA) - Employer also relying on fact that vice-chair had discussions with CALPA regarding the retainer prior to date of Board's decision - Board not agreeing that circumstances giving rise to reasonable apprehension of bias - Reconsideration request denied

DOVER CORPORATION (CANADA) LIMITED INDUSTRIAL DIVISION; RE NATIONAL  
AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION  
OF CANADA (CAW-CANADA) .....(July/August)

568

Natural Justice - Health and Safety - Practice and Procedure - Applicant's request that vice-chair remove himself on grounds of bias dismissed - Applicant alleging that her experience of workplace harassment and continuing discrimination on basis of race amounting to unlawful reprisal contrary to Occupational Health and Safety Act (OHSA) - Board earlier referring applicant to Board's decisions in Meridian and Toronto Board of Education - Applicant directed to show cause why Board ought not to exercise its discretion against inquiring into application - Applicant submitting that Board should hear application for various reasons, including decision made by Human Rights Commission to exercise its discretion to decline to inquire into complaint brought there on basis that complaint was more appropriately dealt with elsewhere -

Board noting that applicant's complaint principally about about race discrimination and that reasoning of Meridian case and Toronto Board of Education case was appropriately applied - Board unwilling to allow Commission to decide how Board's discretion to inquire under section 50(3) of OHSAA should be exercised - Application dismissed

TORONTO HYDRO; RE HELEN LEE .....(Nov./Dec.) 1050

Parties - Certification - Construction Industry - Evidence - Membership Evidence - Practice and Procedure - Representation Vote - IBEW Local 1687 applying to represent certain construction electricians employed by Ontario Hydro - Board earlier conducting pre-hearing representation vote and sealing box - Board concluding that PWU has no standing to participate further in proceeding as of right and that there is no reason to grant standing in exercise of Board's discretion - Board not satisfied that membership evidence filed by PWU conferring sufficient representational authority to permit PWU to participate in IBEW application - Board not persuaded that PWU can be permitted to rely on its collective agreement with Ontario Hydro as basis for standing - Board finding no justification to give PWU amicus curiae status - Board also deciding against opening sealed ballot box and counting ballots - Board directing hearing with respect to remaining outstanding issues

ONTARIO HYDRO; RE IBEW, LOCAL 1687; RE POWER WORKERS' UNION, CUPE LOCAL 1000 (PWU), IBEW, LOCAL 1788, EPSCA, THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO (ECAO); RE GROUP OF EMPLOYEES .....(July/August) 700

Parties - Collective Agreement - Interest Arbitration - Practice and Procedure - Unfair Labour Practice - Union alleging that employer violating the Act because of its refusal to execute or implement first collective agreement as directed by board of arbitration - Employer asserting that board of arbitration exceeded its jurisdiction and that its award is a nullity - Employer asserting same position in pending judicial review application of arbitration award - Board determining that bargaining unit employees not entitled to notice or to participate in Board proceeding - Board doubting its jurisdiction to sit in review of board of arbitration process - Board, in any event, exercising its discretion not to inquire into complaint because fundamental issue between the parties best dealt with by the Court in judicial review application - Application dismissed

GREENBERG STORES LIMITED; RE USWA ..... (Jan./Feb.) 61

Parties - Collective Agreement - Judicial Review - Termination - Timeliness - Board dismissing application to terminate bargaining rights after finding that document executed between union and employer was "collective agreement" - Application not brought during last two months of collective agreement and, therefore, untimely - Employer applying for judicial review - Divisional Court holding that employer without status to seek review of Board's decision - Judicial review application dismissed

CANADIAN WILDLIFE FEDERATION; RE JAN BUREAU AND VICKI PAGE, ON THEIR OWN BEHALF AND ON BEHALF OF A GROUP OF EMPLOYEES OF THE CANADIAN WILDLIFE FEDERATION, USWA, LOCAL 8327, OLRB ..... (May/June) 555

Parties - Construction Industry - Jurisdictional Dispute - Practice and Procedure - Local 721 of Ironworkers' Union and Local 793 of Operating Engineers' union disputing assignment of certain work involving operation of cranes and fork-lifts used at car assembly plant in connection with removal and reinstallation of equipment for new production assembly line - Work in dispute had been subject of March 1997 arbitration decision under Canadian Plan for Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") - Employer and Local 793 asserting that Board ought not to entertain Local 721's application on basis that Plan had already issued decision - Local 721 not considering itself bound by the Plan and not participating in arbitration decision under the Plan - Board denying Plan intervenor status in Board proceeding - Board concluding that Local 721 not bound to the Plan in its own right or as result of actions of international union and that Local 721 accordingly not bound by arbitration decision - Board

also determining that there is no basis to exercise its discretion against entertaining the application

RYCO ALBERICI AND IUOE, LOCAL 793; RE BSOIW, LOCAL 721 ..... (Sept./Oct.)

926

Practice and Procedure - Adjournment - Collective Agreement - Duty of Fair Representation - Ratification and Strike Vote - Unfair Labour Practice - Union and employer making joint request for early termination of collective agreement - Union and employer seeking to replace collective agreement with new 6-year agreement - Union and employer negotiating (and employees ratifying) new 6 year agreement after employer announcing plant closure - New agreement containing various "concessions", but also including increased severance package and provision allowing employees who had already accepted severance packages to revoke their acceptance and return to employment - Objecting employees alleging that union violated its duty of fair representation and asking Board to deny joint request - Board denying adjournment requested by objecting employees' counsel who had been retained on the day before the hearing - Board finding that union made good faith efforts to balance competing interests of its members - Board dismissing challenge to ratification vote based on union allowing departed (or departing) employees to vote on new collective agreement - Unfair labour practice complaints dismissed - Board consenting to early termination of collective agreement

WILLIAM NEILSON LTD. AND TEAMSTERS LOCAL 647; RE SEAN DONOVAN ET AL ..... (Nov./Dec.)

1056

Practice and Procedure - Adjournment - Reconsideration - Termination - Board allowing contested adjournment request with direction that union pay reasonable costs of the day to the other two parties - Board finding claims of \$1750 by the applicant and \$750 by the intervenor to be reasonable and directing payment by next day of hearing - Union seeking reconsideration on basis that amounts claimed by parties unreasonable and that time frame for payment too short - Reconsideration request denied

BANCROFT IGA, BANLAKE ASSOCIATES LIMITED C.O.B. AS; RE D. VANDERMEER, C. THAIN, AND A GROUP OF EMPLOYEES; RE UFCW, LOCALS 175 AND 633 ..... (Nov./Dec.)

965

Practice and Procedure - Bargaining Unit - Certification - Construction Industry - Millwrights' union and Plumbers' union seeking to represent certain construction employees of multi-plant employer - Steelworkers' union and Machinists' union already representing certain employees of employer in certain locations, including employees doing certain construction work - Board describing appropriate bargaining units in certification applications as excluding construction employees already represented by Steelworkers' union and Machinists' union - Employer submitting that Plumbers' union should be estopped from applying for certification because of union's alleged misrepresentation to employer regarding the union's intentions to obtain bargaining rights - Employer's allegations dismissed for failure to make out prima facie case

ALCAN ALUMINIUM LIMITED; RE MILLWRIGHT LOCAL 1410 ("MILLWRIGHTS"); RE ALCAN CHEMICALS, DIVISION OF ALCAN ALUMINIUM LIMITED ("CHEMICAL"); ALCAN ROLLED PRODUCTS ("ROLLED PRODUCTS"); ALCAN CABLE ("CABLE"); ALCAN FOIL PRODUCTS ("FOIL"); USWA, LOCAL 7949 AND LOCAL 8754 ("STEELWORKERS"); IAM, LODGE 54 ("MACHINISTS") ..... (May/June)

305

Practice and Procedure - Bargaining Unit - Certification - Employer - Prior to holding of representation vote, employer taking position that certain disputed individuals ought to be included in bargaining unit and union taking position that such individuals ought to be excluded - After ballots (including those of disputed individuals) cast and counted, both union and employer changing positions and purporting to adopt position formerly advanced by the other - Employer subsequently asking Board to direct new vote and to find that two bargaining units (one excluding the disputed individuals and one composed exclusively of the disputed individuals) appropriate - Employer asserting that another entity employing the disputed individuals - Board



declining to direct second vote - Board finding disputed individuals to be employed by the employer and not by the other entity - Board also finding that, in the circumstances, employer ought not to be permitted to raise new bargaining issue at this stage of proceedings - Board, in any event, not persuaded that applicant's proposed bargaining unit not appropriate - Certificate issuing

MARTHA'S GARDEN INC.; RE TEAMSTERS LOCAL UNION NO. 419 .....(Sept./Oct.) 891

Practice and Procedure - Certification - Certification Where Act Contravened - Construction Industry - Evidence - Intimidation and Coercion - Remedies - Representation Vote - Union alleging that employer making certain threats and that union should be certified under section 11 of the Act - Employer asking Board to entertain subjective testimony of employees regarding whether they felt able to vote freely and whether their own votes reflected their true wishes regarding union representation - Board ruling that proffered evidence not relevant and inadmissible - Board finding that employer's sharing of its "economic analysis" with its employees was not a legitimate exercise of free speech, but designed to intimidate and coerce employees - Board finding that four statutory pre-conditions to certification under section 11 of the Act met - Certificates issuing

JAK ELECTRICAL CONTRACTORS LIMITED; RE IBEW, LOCAL 353 .....(July/August) 578

Practice and Procedure - Certification - Constitutional Law - Timeliness - Employer and incumbent union responding to union's certification application and asserting that application untimely - Employer also asserting that its labour relations governed by Canada Labour Code - Applicant and incumbent union directed to file submissions within two days on constitutional issue, including submissions on how Board should deal with the application given the issue

STERLING MARINE FUELS, A DIVISION OF MCASPHALT INDUSTRIES LTD.; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION LOCAL NO. 880; RE IUOE, LOCAL 793 .....(Mar./Apr.) 280

Practice and Procedure - Certification - Construction Industry - Evidence - Membership Evidence - Parties - Representation Vote - IBEW Local 1687 applying to represent certain construction electricians employed by Ontario Hydro - Board earlier conducting pre-hearing representation vote and sealing box - Board concluding that PWU has no standing to participate further in proceeding as of right and that there is no reason to grant standing in exercise of Board's discretion - Board not satisfied that membership evidence filed by PWU conferring sufficient representational authority to permit PWU to participate in IBEW application - Board not persuaded that PWU can be permitted to rely on its collective agreement with Ontario Hydro as basis for standing - Board finding no justification to give PWU amicus curiae status - Board also deciding against opening sealed ballot box and counting ballots - Board directing hearing with respect to remaining outstanding issues

ONTARIO HYDRO; RE IBEW, LOCAL 1687; RE POWER WORKERS' UNION, CUPE LOCAL 1000 (PWU), IBEW, LOCAL 1788, EPSCA, THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO (ECAO); RE GROUP OF EMPLOYEES .....(July/August) 700

Practice and Procedure - Certification - Evidence - Judicial Review - Union winning representation vote but employer asserting that certificate should not issue - Employer submitting that Board mistakenly determined that there was appearance of more than 40% union support and that vote should not have been directed - Board rejecting employer's argument and affirming its practice under Bill 7 of looking only at information provided by union with its application when determining existence of appearance of 40% support - Board also explaining its inclination, where possible, to count ballots so that "quick votes" under Bill 7 are followed by quick results - Certificate issuing - Application for judicial review dismissed by Divisional Court

CORPORATION OF THE CITY OF TORONTO, THE; RE CUPE, LOCAL 79 AND THE OLRB, AND R.O. MACDOWELL, CHAIR; AND H. PEACOCK, BOARD MEMBER; AND J.A. RUNDLE, BOARD MEMBER ..... (Jan./Feb.) 169

- Practice and Procedure - Certification - Evidence - Security Guards - Employer objecting to certification application brought by Steelworkers' union on ground that union admits to membership persons who are not guards - Statute requiring trade union to satisfy Board that no conflict of interest would result - Board concluding that rational and efficient conduct of proceedings make it appropriate for employer to call its evidence first
- BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE USWA; RE INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 1962  
..... (Jan./Feb.) 1
- Practice and Procedure - Certification - Membership Evidence - Employer asking Board not to give effect to representation vote because no vote ought to have been ordered in the first place - Board affirming approach to determining "appearance" of 40 percent support described in *City of Toronto* case - In making that determination, Board to have regard only to membership evidence filed by union and to its estimate of the number of persons in its proposed bargaining unit - Certificate issuing
- HERCULES MOLDED PRODUCTS INC.; RE UFCW, AFL-CIO-CLC ..... (Sept./Oct.) 866
- Practice and Procedure - Certification - Representation Vote - Security Guards - Applicant union's earlier certification application withdrawn prior to representation vote - Union filing new application for different, but overlapping bargaining unit - Employer and intervening union asserting that new application should be barred - Board ordering vote and directing that "bar" issue be dealt with at hearing after the vote, if necessary - Applicant asking Board to order employer to provide it with names and addresses of all bargaining unit employees - Applicant's request denied - Board directing employer to mail copies of Board's decision and Notice of Vote to all individuals in voting constituency
- NORTH AMERICAN SECURITY SERVICES INC.; RE USWA; RE CANADIAN UNION OF PROFESSIONAL SECURITY-GUARDS ..... (July/August) 657
- Practice and Procedure - Change in Working Conditions - Discharge - Discharge for Union Activity - Interest Arbitration - Unfair Labour Practice - Board earlier directing that first collective agreement between parties be settled by arbitration - Union alleging that employer unlawfully discharged 4 employees shortly after Board's first contract direction - Employer asserting that union had elected to have matter of discharges dealt with by interest arbitration board seized of the contract dispute and that unfair labour practice application should accordingly be dismissed - Board rejecting employer's request to dismiss (without prejudice to employer's right to argue how Board ought to proceed in view of whatever the award of the interest board may be) - Board, however, deferring further consideration of application to next hearing dates scheduled 7 weeks hence (by which time results of interest arbitration may be known to the parties)
- DOVER CORPORATION (CANADA) LIMITED, INDUSTRIAL DIVISION; RE NATIONAL AUTOMOBILE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) ..... (Nov./Dec.) 994
- Practice and Procedure - Charter of Rights and Freedoms - Constitutional Law - Construction Industry - Construction Industry Grievance - Discharge - Evidence - Construction labourer discharged by Ontario Hydro for possessing and smoking marijuana at work and grieving that discharge was without just cause - Union seeking to exclude certain evidence on Charter grounds - Board finding evidence to establish just cause apart from evidence sought to be excluded - Board, therefore, not making any decision on union's Charter arguments - Union claiming that grievor's drug use was rooted in drug dependency that should be treated as a disease or disability requiring accommodation, rather than discipline - Board not satisfied that evidence establishing that grievor addicted or that he had come to grips with his situation - Grievance dismissed
- ONTARIO HYDRO AND THE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION; RE ONTARIO ALLIED CONSTRUCTION TRADES COUNCIL AND LIUNA, LOCAL 506 ..... (July/August) 680

Practice and Procedure - Collective Agreement - Interest Arbitration - Parties - Unfair Labour Practice - Union alleging that employer violating the Act because of its refusal to execute or implement first collective agreement as directed by board of arbitration - Employer asserting that board of arbitration exceeded its jurisdiction and that its award is a nullity - Employer asserting same position in pending judicial review application of arbitration award - Board determining that bargaining unit employees not entitled to notice or to participate in Board proceeding - Board doubting its jurisdiction to sit in review of board of arbitration process - Board, in any event, exercising its discretion not to inquire into complaint because fundamental issue between the parties best dealt with by the Court in judicial review application - Application dismissed	
GREENBERG STORES LIMITED; RE USWA .....	(Jan./Feb.) 61
Practice and Procedure - Construction Industry - Jurisdictional Dispute - Board describing nature of onus in jurisdictional dispute complaints - Carpenters' union and Labourers' union disputing assignment of certain tending and clean-up work associated with erection of water cooling tower - Board concluding that work should have been assigned to Labourers' union	
ECODYNE LIMITED; RE LIUNA, LOCAL 1036 ("LABOURERS") AND CJA, LOCAL 446 ("CARPENTERS") .....	(Mar./Apr.) 197
Practice and Procedure - Construction Industry - Jurisdictional Dispute - Parties - Local 721 of Ironworkers' Union and Local 793 of Operating Engineers' union disputing assignment of certain work involving operation of cranes and fork-lifts used at car assembly plant in connection with removal and reinstallation of equipment for new production assembly line - Work in dispute had been subject of March 1997 arbitration decision under Canadian Plan for Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") - Employer and Local 793 asserting that Board ought not to entertain Local 721's application on basis that Plan had already issued decision - Local 721 not considering itself bound by the Plan and not participating in arbitration decision under the Plan - Board denying Plan intervenor status in Board proceeding - Board concluding that Local 721 not bound to the Plan in its own right or as result of actions of international union and that Local 721 accordingly not bound by arbitration decision - Board also determining that there is no basis to exercise its discretion against entertaining the application	
RYCO ALBERICI AND IUOE, LOCAL 793; RE BSOIW, LOCAL 721 .....	(Sept./Oct.) 926
Practice and Procedure - Construction Industry - Jurisdictional Dispute - Timeliness - Carpenters' union asking Board to dismiss jurisdictional dispute complaint brought by Labourers' union on account of delay - Board not accepting applicant's desire to compile best case or lack of counsel resources to assist in that respect as sufficient reasons for 7 month delay - Application dismissed	
WALTER AND SCI CONSTRUCTION (CANADA) LTD. AND CJA, LOCAL 446; RE LIUNA, LOCAL 1036 .....	(Sept./Oct.) 961
Practice and Procedure - Discharge - Evidence - Health and Safety - Board declining to receive three letters authored by clinical psychologist tendered by applicant where applicant unprepared to produce letters' author for purposes of cross-examination - Applicant employee alleging unlawful reprisals under Occupational Health and Safety Act in connection with complaints of sexual harassment made to Human Rights Commission - Events complained of occurring between 1992 and 1996 - Board exercising its discretion against inquiring into application	
SAMMONS & CHANNER MEN'S CLOTHING; RE IRENE FRANK .....	(Mar./Apr.) 256
Practice and Procedure - Evidence - Health and Safety - Board permitting applicant's representative to tape record proceedings subject to certain specific restrictions regarding use of the recording - Applicant employee alleging that he was harassed and discriminated against by his employer on the basis of his race and that he suffered reprisals for having exercised rights under the Occupational Health and Safety Act ("OHSA") - Board declining to hear proffered "factual"	



and opinion evidence to establish that racial harassment and discrimination may constitute a hazard under OHSA and that the Ontario Human Rights Commission ("OHRC") is failing to exercise its jurisdiction under the Human Rights Code - Board declining to inquire into application because application in essence a complaint about race discrimination and because that matter should be dealt with by OHRC - Application dismissed

TORONTO BOARD OF EDUCATION; RE SELWYN PIETERS; RE CUPE, LOCAL 134  
..... (May/June) 541

Practice and Procedure - First Contract Arbitration - Ratification and Strike Vote - Representation Vote - Termination - Reconsideration - Subsequent to union filing application for first contract arbitration, group of employees applying to terminate bargaining rights - Board directing representation vote and directing that ballot box be sealed - Board also directing that termination application be heard with first contract application - On first day of hearing, employer signing union's proposed collective agreement and asking that first contract application be terminated as moot - Board finding that parties had 'effected a first collective agreement' - Board adjourning union's application and directing that proposed collective agreement be put to ratification vote - Union's application for reconsideration dismissed - Employees ratifying collective agreement, but Board declining to accept ratification vote as expression of employee wishes on termination application - Board directing parties to file submissions regarding status of first contract application and termination application

NATIVE CHILD AND FAMILY SERVICES OF TORONTO; RE CUPE AND ITS LOCAL 3875 ..... (Nov./Dec.) 1032

Practice and Procedure - First Contract Arbitration - Representation Vote - Termination - Employees submitting termination application while first contract application pending before Board - First contract application scheduled for hearing commencing two weeks hence - Decision as to whether or not to order representation vote and, if so, when, to be determined by panel hearing first contract application

INGERSOLL PLASTICS INC.; RE DAVID PENTLAND; RE LIUNA, LOCAL 1059 AFFILIATED WITH A.F. OF L. - C.I.O. - C.L.C. O.F.L. .... (Mar./Apr.) 233

Practice and Procedure - First Contract Arbitration - Representation Vote - Termination - Parties agreeing to adjourn first contract application sine die before any hearing - Five months later, union asking for application to be listed for hearing - Employees filing termination application one month after union's request and three weeks before first contract application scheduled to be heard - Board not ordering representation vote and deferring consideration of termination application until first contract application decided

INGERSOLL PLASTICS INC.; RE DAVID PENTLAND; RE LIUNA, LOCAL 1059 AFFILIATED WITH A.F. OF L. - C.I.O. - C.L.C., O.F.L. .... (May/June) 463

Practice and Procedure - First Contract Arbitration - Termination - Board earlier deciding to hear first contract application first and to defer consideration of termination application - After several days of hearing, employer and union settling first contract application on basis of consent order directing settlement of first collective agreement by arbitration - Board dismissing termination application pursuant to section 43(23) of the Act

EAST SIDE MARIO'S, BIRSSA HOLDINGS INC. C.O.B. AS; RE LYNDIA ANN FALVO; RE UFCW, LOCALS 175/633 ..... (July/August) 574

Practice and Procedure - Health and Safety - Natural Justice - Applicant's request that vice-chair remove himself on grounds of bias dismissed - Applicant alleging that her experience of workplace harassment and continuing discrimination on basis of race amounting to unlawful reprisal contrary to Occupational Health and Safety Act (OHSA) - Board earlier referring applicant to Board's decisions in Meridian and Toronto Board of Education - Applicant directed to show cause why Board ought not to exercise its discretion against inquiring into application -

Applicant submitting that Board should hear application for various reasons, including decision made by Human Rights Commission to exercise its discretion to decline to inquire into complaint brought there on basis that complaint was more appropriately dealt with elsewhere - Board noting that applicant's complaint principally about about race discrimination and that reasoning of Meridian case and Toronto Board of Education case was appropriately applied - Board unwilling to allow Commission to decide how Board's discretion to inquire under section 50(3) of OHSA should be exercised - Application dismissed

TORONTO HYDRO; RE HELEN LEE .....(Nov./Dec.) 1050

Practice and Procedure - Termination - Timeliness - Board inquiring into jurisdictional challenge, including timeliness objection, before directing representation vote in termination application - Applicant in termination application apparently filing application without first delivering copy to union - Application sent by registered mail on last day of "open period" and received by Board two days later - Applicant offering no good reason for Board to relieve against application of Rule 43o of Interim Rules or to treat application as filed on date that it was sent by registered mail - Application dismissed as untimely

CALL-A-CAB LIMITED; RE NORMAN THOMAS; RE RETAIL WHOLESALE CANADA  
CANADIAN SERVICE SECTOR, DIVISION OF THE USWA, LOCAL 1688, THE ON-  
TARIO TAXI UNION ..... (Jan./Feb.) 5

Ratification and Strike Vote - Adjournment - Collective Agreement - Duty of Fair Representation - Practice and Procedure - Unfair Labour Practice - Union and employer making joint request for early termination of collective agreement - Union and employer seeking to replace collective agreement with new 6-year agreement - Union and employer negotiating (and employees ratifying) new 6 year agreement after employer announcing plant closure - New agreement containing various "concessions", but also including increased severance package and provision allowing employees who had already accepted severance packages to revoke their acceptance and return to employment - Objecting employees alleging that union violated its duty of fair representation and asking Board to deny joint request - Board denying adjournment requested by objecting employees' counsel who had been retained on the day before the hearing - Board finding that union made good faith efforts to balance competing interests of its members - Board dismissing challenge to ratification vote based on union allowing departed (or departing) employees to vote on new collective agreement - Unfair labour practice complaints dismissed - Board consenting to early termination of collective agreement

WILLIAM NEILSON LTD. AND TEAMSTERS LOCAL 647; RE SEAN DONOVAN ET AL  
.....(Nov./Dec.) 1056

Ratification and Strike Vote - Collective Agreement - Construction Industry - Judicial Review - Memorandum of settlement between union and employer in construction industry made contingent on ratification - Union submitting agreement to union's accredited delegates and not to employees in the bargaining unit - Board dismissing complaint alleging that provisions of section 79 of the Act requiring employee ratification in these circumstances - Application for judicial review dismissed by Divisional Court as premature

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, KEN WOODS,  
ALLAN DIGGON, TOM MCGREEVY AND IBEW, LOCAL 1788 BY ITS TRUSTEE, IBEW  
AND ONTARIO HYDRO AND EPSCA AND IBEW ELECTRICAL POWER SYSTEMS  
CONSTRUCTION COUNCIL OF ONTARIO, OLRB; RE POWER WORKERS' UNION -  
CUPE, LOCAL 1000 AND J. CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L.  
CRAUSEN, H.R. GILLIES, R.C. HANSEN, G. O'DONNELL, J. STARK, R. THOMS, H.  
TOMSETT AND R.R. YOUNG ON THEIR OWN BEHALF AND ON BEHALF OF ALL  
MEMBERS OF THE IBEW, LOCAL 1788..... (May/June) 557

Ratification and Strike Vote - First Contract Arbitration - Practice and Procedure - Representation  
Vote - Termination - Reconsideration - Subsequent to union filing application for first contract

arbitration, group of employees applying to terminate bargaining rights - Board directing representation vote and directing that ballot box be sealed - Board also directing that termination application be heard with first contract application - On first day of hearing, employer signing union's proposed collective agreement and asking that first contract application be terminated as moot - Board finding that parties had 'effected a first collective agreement' - Board adjourning union's application and directing that proposed collective agreement be put to ratification vote - Union's application for reconsideration dismissed - Employees ratifying collective agreement, but Board declining to accept ratification vote as expression of employee wishes on termination application - Board directing parties to file submissions regarding status of first contract application and termination application

NATIVE CHILD AND FAMILY SERVICES OF TORONTO; RE CUPE AND ITS LOCAL 3875 ..... (Nov./Dec.)

1032

Ratification and Strike Votes - Duty of Fair Representation - Unfair Labour Practice - Group of employees alleging that union misled employees about terms of contract settlement - Employees asserting that Labour Relations Act obliging union in conducting ratification votes to tell its members in advance of the meeting and in written form contents of proposed settlement - Board dismissing application for failure to make out *prima facie* case

GENERAL MOTORS OF CANADA LIMITED, PEREGRINE OSHAWA INC. AND PEREGRINE WINDSOR INC.; RE GROUP OF EMPLOYEES REPRESENTED BY RENE DUBEAU, LEO KELLY, EUGENE WEBER AND BRUCE COOK; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF CANADA (CAW-CANADA) AND LOCAL NO. 222 CAW ..... (Mar./Apr.)

210

Reconsideration - Adjournment - Practice and Procedure - Termination - Board allowing contested adjournment request with direction that union pay reasonable costs of the day to the other two parties - Board finding claims of \$1750 by the applicant and \$750 by the intervenor to be reasonable and directing payment by next day of hearing - Union seeking reconsideration on basis that amounts claimed by parties unreasonable and that time frame for payment too short - Reconsideration request denied

BANCROFT IGA, BANLAKE ASSOCIATES LIMITED C.O.B. AS; RE D. VANDERMEER, C. THAIN, AND A GROUP OF EMPLOYEES; RE UFCW, LOCALS 175 AND 633

..... (Nov./Dec.)

965

Reconsideration - Bargaining Unit - Certification - Representation Vote - Union applying to represent bargaining unit of part-time and casual nurses employed by hospital - Board earlier directing that vote be held on fifth day after application was filed - Vote held on Friday before long week-end - Board rejecting employer's submission that employees had insufficient notice of the vote and insufficient access to the voting itself - Request to reconsider earlier decision ordering vote dismissed - Union describing appropriate bargaining unit as including all part-time and casual nurses "employed in a nursing capacity" - Employer submitting that bargaining unit should mirror existing full-time unit and so should be limited to those "engaged in nursing care" - Board concluding that part-time unit that would include nurses not involved in direct nursing care would cause employer labour relations problems of a substantial nature - Board accepting employer's bargaining unit description as appropriate - Final certificate issuing

MOUNT SINAI HOSPITAL; RE ONA ..... (July/August)

651

Reconsideration - Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the



vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application for judicial review brought by objecting individual dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED,  
ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER.....(Mar./Apr.)

298

Reconsideration - Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application to have judicial review application heard by single judge on grounds of urgency and motion to stay decision of the Board dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED;  
MICHAEL BAUER RE OLRB, IBEW, LOCAL 353.....(Jan./Feb.)

169

Reconsideration - Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Objecting individual seeking judicial review and filing three affidavits in support of application - Motions' court judge holding affidavits inadmissible and ordering them struck out

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED,  
ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER.....(Mar./Apr.)

297

Reconsideration - Certification - Construction Industry - Judicial Review - Trade Union - Power Workers' Union (PWU) seeking to displace International Brotherhood of Electrical Workers (IBEW) in several bargaining units - Board concluding that PWU not a construction "trade union" within meaning of section 126 of the Act and therefore not entitled to bring its certification applications - Applications for certification and request for reconsideration dismissed - PWU applying for judicial review - Motions Court judging striking out portion of affidavit and factum filed by PWU

ONTARIO HYDRO, G.T. SURDYKOWSKI, OLRB, IBEW, LOCAL 1788, IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO, IBEW, LOCAL 105, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, THE IBEW CONSTRUCTION COUNCIL OF ONTARIO, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1687, ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION AND ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO; RE PWU, CUPE, LOCAL 1000.....(Nov./Dec.)

1066

Reconsideration - Certification - Construction Industry - Trade Union - Power Workers' Union (PWU) seeking to displace International Brotherhood of Electrical Workers (IBEW) in several bargaining units - Board concluding that PWU not a construction "trade union" within meaning of section 126 of the Act and therefore not entitled to bring its certification applications - Applications for certification and request for reconsideration dismissed

ONTARIO HYDRO; THE POWER WORKERS' UNION, CUPE LOCAL 1000 ("PWU"); RE THE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION (EPSCA), THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO (ECAO), INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1788 (IBEW 1788), THE IBEW CONSTRUCTION COUNCIL OF ONTARIO (IBEW CCO), INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1687 (IBEW 1687).... (Jan./Feb.)

82

Reconsideration - Certification - Construction Industry - Union applying for reconsideration of decision dismissing certification application and imposing one year "bar" on new applications - Board dismissing union's certification application after finding that bargaining unit included only one employee - Union arguing that mandatory "bar" not applying in the circumstances - Reconsideration application dismissed

NORTHAM DEVELOPMENT CORPORATION AND/OR NORTHAM CONSTRUCTION CORP.; RE CARPENTERS AND ALLIED WORKERS LOCAL 27 CJA.....(Sept./Oct.)

915

Reconsideration - Certification - Employee - Evidence - Membership Evidence - Representation Vote - Trade Union Status - Board finding that locals of UNITE and UNITE's Ontario District Council are inter-related organizations each of which has status of a trade union within the meaning of the Act - Employer and objecting employees asking Board to dismiss application on grounds that application filed by District Council was accompanied by evidence of membership in International union - Board seeing no reason to overturn evidence of earlier finding regarding 40 percent "appearance" of support in applicant - Board allowing union to challenge employment status of two individuals for first time after the vote where their status was already in issue for other reasons and their ballots were already segregated

BLACK PHOTO CORPORATION; UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES ONTARIO DISTRICT COUNCIL; RE GROUP OF EMPLOYEES .....

(May/June)

347

Reconsideration - Construction Industry - Construction Industry Grievance - Related Employer - Employer seeking reconsideration of related employer decision on ground that Board failed to set out counsels' arguments and failed to address the arguments, including case law - Board noting that in order to fulfill its goal of timely decision-making, it is often required to determine how much detail a given decision warrants - Where law is relatively settled, the evidence relatively brief, and the outcomes glaringly apparent, Board may decide not to issue detailed

reasons - The seven-page reasons for decision, in which the Board set out the relevant facts and applied its understanding of the law to those facts, were adequate - Reconsideration application dismissed

GLOBAL MECHANICAL LTD., INTERCONTINENTAL PLUMBING AND FIRE PROTECTION CO. LTD., DYNAMIC POWER EXCAVATING LTD., IPJ INVESTMENTS LTD.; RE ONTARIO PIPE TRADES COUNCIL OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA ..... (Mar./Apr.) 232

Reconsideration - Discharge - Discharge for Union Activity - Judicial Review - Unfair Labour Practice - Board exercising its discretion not to inquire into unfair labour practice complaint where substance of complaint and of grievances at arbitration overlapped, where allegation of anti-union motivation was before arbitration board and where arbitration board had complete jurisdiction to inquire into matter - Complaint dismissed - Request for reconsideration dismissed - Application for judicial review dismissed by Divisional Court

DEMETRIADES, JOHN; RE OLRB AND ST. JOSEPH'S HEALTH CENTRE..... (May/June) 556

Reconsideration - Discharge - Judicial Review - Health and Safety - Applicant asserting that she was twice injured at work, that the injuries were reported to her employer, and that on one occasion she sought, and obtained, an assignment of lighter duties to accommodate her injury - Applicant subsequently released from employment during probation and alleging unlawful reprisal contrary to Occupational Health and Safety Act - Board dismissing application for failure to make out prima facie case - Applicant's reconsideration request denied - Application for judicial review dismissed by Divisional Court

HORIZON PLASTICS COMPANY LIMITED, UFCW AND OLRB; RE SHELLY STILES ..... (Nov./Dec.) 1066

Reconsideration - First Contract Arbitration - Judicial Review - Natural Justice - Unfair Labour Practices - Board earlier directing settlement of first collective agreement by arbitration - Employer seeking reconsideration of decision on grounds of reasonable apprehension of bias - Employer submitting that apprehension of bias arising because on or about the date of the Board's earlier decision, vice-chair of the panel entered into a retainer agreement with the Canadian Air Line Pilots Association (CALPA) - Employer also relying on fact that vice-chair had discussions with CALPA regarding the retainer prior to date of Board's decision - Board not agreeing that circumstances giving rise to reasonable apprehension of bias - Reconsideration request denied - Application for judicial review dismissed by Divisional Court

DOVER CORPORATION (CANADA) LIMITED INDUSTRIAL DIVISION; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA), BRIAN KELLER, KAREN BRENNAN AND LARRY BERTUZZI, AND THE OLRB ..... (Nov./Dec.) 1064

Reconsideration - First Contract Arbitration - Natural Justice - Unfair Labour Practice - Board earlier directing settlement of first collective agreement by arbitration - Employer seeking reconsideration of decision on grounds of reasonable apprehension of bias - Employer submitting that apprehension of bias arising because on or about the date of the Board's earlier decision, vice-chair of the panel entered into a retainer agreement with the Canadian Air Line Pilots Association (CALPA) - Employer also relying on fact that vice-chair had discussions with CALPA regarding the retainer prior to date of Board's decision - Board not agreeing that circumstances giving rise to reasonable apprehension of bias - Reconsideration request denied

DOVER CORPORATION (CANADA) LIMITED INDUSTRIAL DIVISION; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) ..... (July/August) 568



Reconsideration - First Contract Arbitration - Practice and Procedure - Ratification and Strike Vote - Representation Vote - Termination - Subsequent to union filing application for first contract arbitration, group of employees applying to terminate bargaining rights - Board directing representation vote and directing that ballot box be sealed - Board also directing that termination application be heard with first contract application - On first day of hearing, employer signing union's proposed collective agreement and asking that first contract application be terminated as moot - Board finding that parties had 'effected a first collective agreement' - Board adjourning union's application and directing that proposed collective agreement be put to ratification vote - Union's application for reconsideration dismissed - Employees ratifying collective agreement, but Board declining to accept ratification vote as expression of employee wishes on termination application - Board directing parties to file submissions regarding status of first contract application and termination application

NATIVE CHILD AND FAMILY SERVICES OF TORONTO; RE CUPE AND ITS LOCAL 3875 .....(Nov./Dec.)

1032

Reference - Bargaining Rights - Conciliation - Sale of a Business - Union representing bargaining unit of building cleaners employed by landlord - Bill 40 deeming subsequent contracting out to cleaning contractor to be sale of a business - Union giving notice to bargain to landlord and applying for conciliation - Landlord objecting to appointment of conciliation officer on ground that union no longer having bargaining rights as against it - Board finding that deemed sale of a business did not terminate union's bargaining rights with landlord or wipe out its collective agreement - Board advising Minister that she has authority to make requested appointment of conciliation officer

CADILLAC FAIRVIEW CORPORATION LIMITED, THE ("CADILLAC FAIRVIEW") AND OAKDALE CLEANERS & MAINTENANCE LIMITED ("OAKDALE"); RE LIUNA, LOCAL 1059 ("THE UNION") .....(Mar./Apr.)

187

Reference - Construction Industry - Final Offer Vote - Minister of Labour referring question of certain individuals' eligibility to vote in final offer vote directed by Minister in respect of employers operating in road building sector of the construction industry - Union submitting that eligible voters should include union members who had worked in road building sector in recent past and who would be eligible to vote according to union's internal rules set out in union constitution and by-laws - Board advising Minister that, even in the construction industry, only employees of the employer are entitled to vote, and union members who were not employees in the bargaining units are not eligible to vote

ASSOCIATED CONTRACTING INC.; RE IUOE, LOCAL 793 .....(Sept./Oct.)

813

Reference - Hospital Labour Disputes Arbitration Act - Board not accepting submission that Board ought not to answer question posed in Minister's reference on grounds of res judicata or issue estoppel or abuse of process - Employer providing "independent living" services to physically disabled adults living in three housing projects - Employer also offering outreach services to clients living in their own homes - Board finding employer to be a "hospital" within meaning of Hospital Labour Disputes Arbitration Act

BELLWOODS CENTRE FOR COMMUNITY LIVING INC.; RE SEIU, LOCAL 204 .....(May/June)

331

Reference - Hospital Labour Disputes Arbitration Act - Employer submitting that 'retirement living centre' ought not to be found to be 'hospital' on ground that services provided by it to residents would not be significantly disturbed by a strike - Board finding that employer providing accommodation, observation, assessment and supervision of its aged residents and that that is sufficient to be regarded as a 'home for the aged' and therefore a 'hospital' within the meaning of the Hospital Labour Disputes Arbitration Act

MEADOWCROFT HOLDINGS INC., C.O.B. AS EXECU-CARE NURSING SERVICES, KITCHENER MEADOWCROFT LIMITED PARTNERSHIP AND 5M MANAGEMENT SERVICES LIMITED; RE LONDON AND DISTRICT SERVICES WORKERS' UNION, LOCAL 220 .....(Jan./Feb.)

74

Related Employer - Construction Industry - Construction Industry Grievance - Reconsideration - Employer seeking reconsideration of related employer decision on ground that Board failed to set out counsels' arguments and failed to address the arguments, including case law - Board noting that in order to fulfill its goal of timely decision-making, it is often required to determine how much detail a given decision warrants - Where law is relatively settled, the evidence relatively brief, and the outcomes glaringly apparent, Board may decide not to issue detailed reasons - The seven-page reasons for decision, in which the Board set out the relevant facts and applied its understanding of the law to those facts, were adequate - Reconsideration application dismissed	
GLOBAL MECHANICAL LTD., INTERCONTINENTAL PLUMBING AND FIRE PROTECTION CO. LTD., DYNAMIC POWER EXCAVATING LTD., IPJ INVESTMENTS LTD.; RE ONTARIO PIPE TRADES COUNCIL OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA .....	232
Related Employer - Lock-Out - Remedies - Sale of a Business - Board not accepting submission that assignment in bankruptcy or that bankruptcy court orders should cause Board not to find sale of a business - Sale of a business and single employer declarations issuing - Board finding that successor employer's refusal to re-open plant closed by predecessor so long as employees there do not agree to concessions amounting to technical unlawful lock-out - Board declining to make cease and desist order in order to permit continuation of bargaining between the parties	
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MARSIL MECHANICAL INC. ("MARSIL"); RE ONTARIO PIPE TRADES COUNCIL OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA ("O.P.C.") AND THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA ("U.A.") .....	900
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JAK ELECTRICAL CONTRACTORS LIMITED; RE IBEW, LOCAL 353 .....	578
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- certifying union under section 11 of the Act - Board directing reinstatement of inside union organizer who resigned position because he thought that he would be dismissed following union's loss in representation vote
- TILL-FAB LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS' UNION OF CANADA (CAW) .....(Nov./Dec.) 1047
- Remedies - Construction Industry - Construction Industry Grievance - Damages - Board earlier finding employer bound to collective agreement, but holding that union estopped from enforcing agreement in respect of certain business arrangements in place when Board's decision issued - Board rejecting employer's argument that estoppel applying to contract with carpentry sub-contractor entered into after date of Board's earlier decision
- TORONTO DOMINION BANK; RE CARPENTERS & ALLIED WORKERS, LOCAL 27 CJA .....(Mar./Apr.) 286
- Remedies - Construction Industry - Construction Industry Grievance - Damages - Jurisdictional Dispute - Board earlier resolving jurisdictional dispute complaint involving Painters' union in favour of Labourers' union - Labourers' seeking damages as result of improper assignment - Board following *Robertson-Yates* and *Sawyers & Associates* decisions - Board declining to award damages on basis that assignment of work to Painters' union was not unreasonable
- ELLIS-DON LIMITED; RE LIUNA, LOCAL 247 .....(Mar./Apr.) 202
- Remedies - Construction Industry - Construction Industry Grievance - Union amending Hiring Hall Procedures to discourage members from accepting name-hires - Board finding that amendment to Hiring Hall Procedures undermining provisions of collective agreement granting employer certain privilege regarding name-hires - Board finding that collective agreement containing implied term that neither party will conduct itself in manner so as to frustrate its operation - Board declaring that union's amendment to Hiring Hall Procedures violating collective agreement, but declining to issue cease and desist order
- MASTER INSULATORS' ASSOCIATION OF ONTARIO INC., THE; RE HFIA, LOCAL 95 .....(Sept./Oct.) 912
- Remedies - Construction Industry - Damages - Discharge - Unfair Labour Practice - Employer acknowledging violation of the Act but parties disputing appropriate remedy - Board rejecting submission that reinstatement not appropriate - Employer directed to offer grievor position if its employee complement expands to more than 20 employees in 1997 - Board making no order regarding 1998 - Board finding delay in filing complaint not unreasonable and requiring no reduction in damages to which grievor otherwise entitled - Board also finding grievor's attempts at mitigation reasonable - Board deducting workers' compensation benefits received during 5 month period from damages to which grievor otherwise entitled - Board finding that but for employer's wrongful conduct, grievor would have earned sufficient credits to entitle him to employment insurance benefits during two periods of lay-off and Board ordering damages in that respect as well
- TORBRIDGE CONSTRUCTION LTD.; RE LIUNA, LOCAL 183 .....(July/August) 751
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- DA VINCI CENTRE, SOCIETA ITALIANA DI BENEVOLENZA PRINCIPE DI PIEMONTE C.O.B. AS THE; RE HOSPITALITY, COMMERCIAL AND SERVICE EMPLOYEES UNION, LOCAL 73 CHARTERED BY H.E.R.E. ....(Nov./Dec.) 970



- Remedies - Duty to Bargain in Good Faith - Interim Relief - Unfair Labour Practice - On eve of strike, employer unilaterally transferring seven bargaining unit positions outside of bargaining unit - Union filing unfair labour practice complaint and asking for interim order requiring employer to continue to recognize union as exclusive bargaining agent for the seven individuals holding the disputed positions - Board concluding that balance of harm weighing in favour of union - Application for interim order granted pending disposition or resolution of unfair labour practice complaint
- REGIONAL MUNICIPALITY OF NIAGARA, THE; RE CUPE, LOCAL 1287..(July/August) 733
- Remedies - Duty to Bargain in Good Faith - Interim Relief - Unfair Labour Practice - Union alleging that employer's failure to provide certain financial and other information violating duty to bargain - Board making interim order under section 98 of the Act directing production of information and setting out mechanism for its collection
- METRO CAB COMPANY LIMITED AND METRO CABS ASSOCIATES' COMMITTEE REPRESENTING ASSOCIATES OF METRO CAB COMPANY LIMITED; RE RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE USWA AND LOCAL 1688 THE ONTARIO TAXI UNION..... (May/June) 474
- Remedies - Duty to Bargain in Good Faith - Strike - Unfair Labour Practice - Employer's proposal made in January for new collective agreement rejected and employees striking - Union and employees purporting to accept proposal in March - Board satisfied that January proposal had been extinguished by passage of time and in context of long strike - Board finding that employer's rejection of union's repeated overtures to return to bargaining violating its duty to bargain - Board also finding that employer's April proposal for a new collective agreement was designed to invite rejection and was in breach of the Act - Application allowed - Parties directed to return to bargaining forthwith to bargain in good faith and to make every reasonable effort to reach a collective agreement
- PC WORLD, CIRCUIT WORLD CORPORATION, OPERATING AS; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA), LOCAL 124 .....(July/August) 711
- Remedies - Financial Statement - Board finding that union's "unaudited" financial statement accompanied by Review Engagement Report prepared by chartered accountants not amounting to audited financial statement required by section 92 of the Act - Board directing union to file with the Board (and to deliver to the applicant) a copy of its audited financial statements verified by the affidavit of its treasurer
- MARTIN, LOUIS; RE INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTSMEN, LOCAL 5.....(Nov./Dec.) 1030
- Remedies - Health and Safety - Applicant employees alleging unlawful reprisal in form of two-week suspensions imposed as result of work refusal - Board finding that employees not having genuine health and safety concern regarding increased speed on production line - Board also satisfied that employees did not have reasonable basis for honest belief that they or other workers were endangered - Board, however, exercising discretion under subsection 50(7) of the Act to substitute five-day and one-day suspensions for two-week suspensions imposed by employer
- GENERAL MOTORS OF CANADA LIMITED, ROBERT TAYLOR, DON SAWYER AND; RE JOHN SELLERS, MARIO ROMAGNUOLO, GERALD PELLEY AND CAW LOCAL 222 ..... (Mar./Apr.) 223
- Remedies - Hospital Labour Disputes Arbitration Act - Sale of a Business - Parties agreeing that merger of hospitals constituting sale of a business, that the relevant bargaining units be merged, and that a representation vote between the incumbent unions be held to determine the new bargaining agent - Board ruling that collective agreement of winning union applies to all of the

employees in the bargaining unit after a vote held under section 69(8) of the Act - Board determining that because all the bargaining units are covered by the statutory "freeze", the Board's declarations under section 69(4) of the Act should be made retroactive to the date of application

WEST PARRY SOUND HEALTH CENTRE; RE CUPE, LOCAL 1473, OPSEU, LOCAL 320 AND SEU, LOCAL 478.....(July/August)

794

Remedies - Lock-Out - Related Employer - Sale of a Business - Board not accepting submission that assignment in bankruptcy or that bankruptcy court orders should cause Board not to find sale of a business - Sale of a business and single employer declarations issuing - Board finding that successor employer's refusal to re-open plant closed by predecessor so long as employees there do not agree to concessions amounting to technical unlawful lock-out - Board declining to make cease and desist order in order to permit continuation of bargaining between the parties

VULCAN CONTAINERS LTD. AND VULCAN CONTAINERS (ONTARIO) LTD., VULCAN PACKAGING INC.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 1008.....(July/August)

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Remedies - Sale of a Business - Representation Vote - Board earlier finding merger of two hospitals to be sale of a business - Board subsequently finding intermingling and determining that combined service/office/clerical unit and paramedical units appropriate - Board directing taking of representation votes and determining that all incumbent unions should be listed on ballot and that, because vast majority of employees in bargaining units unionized, there ought not to be non-union option on ballot

PERTH AND SMITH FALLS DISTRICT HOSPITAL; RE OPSEU, CUPE AND ITS LOCAL 2119, ASSOCIATION OF ALLIED HEALTH PROFESSIONALS: ONTARIO, INDEPENDENT CANADIAN TRANSIT UNION AND ITS LOCAL 6; RE NON-UNION EMPLOYEES, PERTH AND SMITHS FALLS DISTRICT HOSPITAL.....(May/June)

491

Remedies - Unfair Labour Practice - Applicant employee alleging unlawful reprisal from union as result of earlier complaint alleging breach of duty of fair representation - Applicant seeking order removing union steward from workplace and from any workplace where he might be assigned work and also seeking declaratory relief - Board noting that it was unlikely to grant remedies sought, particularly where applicant had never asked union to sanction conduct of steward and where conduct complained of had ceased almost one year earlier - Board exercising its discretion not to inquire further into complaint - Application dismissed

JEBODH, DEV; RE OPSEU; RE THE CROWN IN THE RIGHT OF ONTARIO, AS REPRESENTED BY MANAGEMENT BOARD OF CABINET .....(Mar./Apr.)

236

Representation Vote - Bargaining Unit - Certification - Board directing representation vote in voting constituency mirroring bargaining unit proposed by union and agreed to by employer - On eve of taking of representation vote, employer writing to Board to assert that union's proposed bargaining unit not appropriate - Board not permitting employer to approbate and reprobate at same time - Board holding employer to its agreement to union's proposed bargaining unit and finding agreed-upon bargaining unit appropriate - Certificate issuing

CHEDOKE-MCMASTER HOSPITALS; RE IUOE, LOCAL 772 .....(Jan./Feb.)

35

Representation Vote - Bargaining Unit - Certification - Reconsideration - Union applying to represent bargaining unit of part-time and casual nurses employed by hospital - Board earlier directing that vote be held on fifth day after application was filed - Vote held on Friday before long week-end - Board rejecting employer's submission that employees had insufficient notice of the vote and insufficient access to the voting itself - Request to reconsider earlier decision ordering vote dismissed - Union describing appropriate bargaining unit as including all part-time and casual nurses "employed in a nursing capacity" - Employer submitting that bargaining

unit should mirror existing full-time unit and so should be limited to those “engaged in nursing care” - Board concluding that part-time unit that would include nurses not involved in direct nursing care would cause employer labour relations problems of a substantial nature - Board accepting employer’s bargaining unit description as appropriate - Final certificate issuing

MOUNT SINAI HOSPITAL; RE ONA .....(July/August) 651

Representation Vote - Build-Up - Certification - Employer’s response to certification application asserting that workforce about to increase and that representation vote should be postponed - Board directing taking of representation vote and indicating that “build-up” issue may be raised by employer at hearing after vote if necessary

PET-PAK CONTAINERS; RE THE CANADIAN UNION OF OPERATING ENGINEERS AND GENERAL WORKERS .....(Mar./Apr.) 249

Representation Vote - Certification - Certification Where Act Contravened - Board concluding that conduct of employer in circulating amongst employees and engaging them in individual and group discussions regarding the union violating section 70 of the Act - Employer’s refusal to answer questions regarding closing of store if union certified amounting to intentionally generated implied threat to employees’ job security and also violating the Act - Board concluding that results of representation vote not disclosing employees’ true wishes, that no remedy short of automatic certification sufficient to counter effect of employer contraventions, and that union holding membership support sufficient for collective bargaining - Union certified under section 11 of the Act

WAL-MART CANADA, INC.; RE USWA ..... (Jan./Feb.) 141

Representation Vote - Certification - Certification Where Act Contravened - Charter of Rights - Constitutional Law - Judicial Review - Board concluding that conduct of employer in circulating amongst employees and engaging them in individual and group discussions regarding the union violating section 70 of the Act - Employer’s refusal to answer questions regarding closing of store if union certified amounting to intentionally generated implied threat to employees’ job security and also violating the Act - Board concluding that results of representation vote not disclosing employees’ true wishes, that no remedy short of automatic certification sufficient to counter effect of employer contraventions, and that union holding membership support sufficient for collective bargaining - Union certified under section 11 of the Act - Applications for judicial review brought by employer and by objecting employees dismissed by Divisional Court

WAL-MART CANADA INC.; RE USWA AND THE OLRB; RE TIZIANI ALFINI ET AL.; RE OLRB, JANICE JOHNSTON, VICE-CHAIR, H. PEACOCK, BOARD MEMBER R.W. PIRRIE, BOARD MEMBER AND USWA .....(July/August) 810

Representation Vote - Certification - Certification Where Act Contravened - Charter of Rights - Constitutional Law - Judicial Review - Board concluding that conduct of employer in circulating amongst employees and engaging them in individual and group discussions regarding the union violating section 70 of the Act - Employer’s refusal to answer questions regarding closing of store if union certified amounting to intentionally generated implied threat to employees’ job security and also violating the Act - Board concluding that results of representation vote not disclosing employees’ true wishes, that no remedy short of automatic certification sufficient to counter effect of employer contraventions, and that union holding membership support sufficient for collective bargaining - Union certified under section 11 of the Act - Applications for judicial review brought by employer and by objecting employees dismissed by Divisional Court - Application for leave to appeal dismissed by Court of Appeal

WAL-MART CANADA INC.; RE USWA AND THE ONTARIO LABOUR RELATIONS BOARD .....(Sept./Oct.) 963



Representation Vote - Certification - Certification Where Act Contravened - Construction Industry - Evidence - Intimidation and Coercion - Practice and Procedure - Remedies - Union alleging that employer making certain threats and that union should be certified under section 11 of the Act - Employer asking Board to entertain subjective testimony of employees regarding whether they felt able to vote freely and whether their own votes reflected their true wishes regarding union representation - Board ruling that proffered evidence not relevant and inadmissible - Board finding that employer's sharing of its "economic analysis" with its employees was not a legitimate exercise of free speech, but designed to intimidate and coerce employees - Board finding that four statutory pre-conditions to certification under section 11 of the Act met - Certificates issuing

JAK ELECTRICAL CONTRACTORS LIMITED; RE IBEW, LOCAL 353 .....(July/August) 578

Representation Vote - Certification - Change in Working Conditions - Unfair Labour Practice - Union alleging that video tape and letter sent by employer to each employee's home on eve of representation vote contained material misrepresentations regarding statutory freeze and threats to employment - Union asking that second vote be ordered - Board rejecting union's allegations - Application for certification and unfair labour practice complaints dismissed

KRAFT CANADA INC.; RE UFCW, LOCAL 175.....(Mar./Apr.) 239

Representation Vote - Certification - Charges - Unfair Labour Practice - Canadian Health Care Workers (CHCW) applying to displace Service Workers' Union Local 220 as bargaining agent for certain hospital workers - Board finding that allegations made by CHCW concerning conduct of Local 220 and employer could not, even if true, support finding of breach of the Act or undermine results of representation vote - Applications dismissed

GRAND RIVER HOSPITAL CORPORATION; RE CANADIAN HEALTH CARE WORKERS (C.H.C.W.); RE LONDON & DISTRICT SERVICE WORKERS' UNION, LOCAL 220 .....(Sept./Oct.) 855

Representation Vote - Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application for judicial review brought by objecting individual dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED, ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER .....(Mar./Apr.) 298

Representation Vote - Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote

and alleging that he is “employee” within the meaning of the Act (despite parties’ agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was “employee” - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application to have judicial review application heard by single judge on grounds of urgency and motion to stay decision of the Board dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED;  
MICHAEL BAUER RE OLRB, IBEW, LOCAL 353..... (Jan./Feb.)

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Representation Vote - Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is “employee” within the meaning of the Act (despite parties’ agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was “employee” - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Objecting individual seeking judicial review and filing three affidavits in support of application - Motions’ court judge holding affidavits inadmissible and ordering them struck out

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED,  
ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER..... (Mar./Apr.)

297

Representation Vote - Certification - Construction Industry - Evidence - Membership Evidence - Parties - Practice and Procedure - IBEW Local 1687 applying to represent certain construction electricians employed by Ontario Hydro - Board earlier conducting pre-hearing representation vote and sealing box - Board concluding that PWU has no standing to participate further in proceeding as of right and that there is no reason to grant standing in exercise of Board’s discretion - Board not satisfied that membership evidence filed by PWU conferring sufficient representational authority to permit PWU to participate in IBEW application - Board not persuaded that PWU can be permitted to rely on its collective agreement with Ontario Hydro as basis for standing - Board finding no justification to give PWU amicus curiae status - Board also deciding against opening sealed ballot box and counting ballots - Board directing hearing with respect to remaining outstanding issues

ONTARIO HYDRO; RE IBEW, LOCAL 1687; RE POWER WORKERS’ UNION, CUPE  
LOCAL 1000 (PWU), IBEW, LOCAL 1788, EPSA, THE ELECTRICAL CONTRACTORS  
ASSOCIATION OF ONTARIO (ECAO); RE GROUP OF EMPLOYEES ..... (July/August)

700

Representation Vote - Certification - Employee - Evidence - Membership Evidence - Reconsideration - Trade Union Status - Board finding that locals of UNITE and UNITE’s Ontario District Council

are inter-related organizations each of which has status of a trade union within the meaning of the Act - Employer and objecting employees asking Board to dismiss application on grounds that application filed by District Council was accompanied by evidence of membership in International union - Board seeing no reason to overturn evidence of earlier finding regarding 40 percent "appearance" of support in applicant - Board allowing union to challenge employment status of two individuals for first time after the vote where their status was already in issue for other reasons and their ballots were already segregated

BLACK PHOTO CORPORATION; UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES ONTARIO DISTRICT COUNCIL; RE GROUP OF EMPLOYEES ..... (May/June)

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Representation Vote - Certification - Employer asking Board to direct new vote on ground that two employees did not receive notice of the hours that the vote was held and were therefore deprived of opportunity to cast ballot - Employer submitting that the two employees believed that the polls would be open from 5:30 a.m. to 7:30 a.m. (on the basis that the employer had agreed with the union's proposal to have the vote during those hours) whereas the poll was open only until 7:00 a.m. - Employer submitting that Notice of Vote setting out time of vote had been posted on morning of work day prior to the vote, but after the two employees had left the facility - Board finding that sufficient notice of the vote given and that employees who relied on parties' agreement regarding hours of the vote did so in disregard of Board's instructions set out in Notice of Application posted in workplace - Board not ordering new vote - Certificate issuing

SMALL FRY SNACK FOODS INC.; RE MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647 ..... (Jan./Feb.)

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Representation Vote - Certification - Local of UFCW applying for certification - Employer asking for application to be dismissed without a hearing or a vote on ground that one-year bar in effect against UFCW as result of unsuccessful application made by it three months earlier - Employer asserting that UFCW and its local "one and the same" for purposes of the Act - In the alternative, employer asking for ruling on bar issue prior to directing vote - Board directing vote and noting that bar issue may be raised subsequently

WHITE ROSE CRAFTS AND NURSERY SALES LIMITED; RE UFCW, LOCAL 1977 ..... (May/June)

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Representation Vote - Certification - Practice and Procedure - Security Guards - Applicant union's earlier certification application withdrawn prior to representation vote - Union filing new application for different, but overlapping bargaining unit - Employer and intervening union asserting that new application should be barred - Board ordering vote and directing that "bar" issue be dealt with at hearing after the vote, if necessary - Applicant asking Board to order employer to provide it with names and addresses of all bargaining unit employees - Applicant's request denied - Board directing employer to mail copies of Board's decision and Notice of Vote to all individuals in voting constituency

NORTH AMERICAN SECURITY SERVICES INC.; RE USWA; RE CANADIAN UNION OF PROFESSIONAL SECURITY-GUARDS ..... (July/August)

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Representation Vote - Certification - Security Guards - Union applying to represent bargaining unit of 140 security guards working at 36 locations - Applicant asking for Board order directing employer to produce labels containing names and addresses of each person on voters' list so as to allow union to mail written materials to employees before holding of representation vote - Board making requested order and directing that costs associated with mailing be borne by union

PROVINCIAL SECURITY SERVICES LTD.; RE USWA ..... (July/August)

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Representation Vote - Certification - Union applying to represent bargaining unit of university faculty - Board rejecting university's request for mail-in ballot so as to permit faculty on sabbatical and on unpaid leave opportunity to vote  BROCK UNIVERSITY; RE BROCK UNIVERSITY FACULTY ASSOCIATION (UNINCORPORATED #2).....	(Jan./Feb.)	2
Representation Vote - Employee - Certification - Board determining that two individuals with sporadic contact with workplace and who perform work on an erratic and irregular basis are not in an employment relationship with employer and not eligible to vote in representation vote  BLACK PHOTO CORPORATION; RE UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES ONTARIO DISTRICT COUNCIL; RE GROUP OF EMPLOYEES .....	(July/August)	559
Representation Vote - First Contract Arbitration - Practice and Procedure - Ratification and Strike Vote - Termination - Reconsideration - Subsequent to union filing application for first contract arbitration, group of employees applying to terminate bargaining rights - Board directing representation vote and directing that ballot box be sealed - Board also directing that termination application be heard with first contract application - On first day of hearing, employer signing union's proposed collective agreement and asking that first contract application be terminated as moot - Board finding that parties had 'effected a first collective agreement' - Board adjourning union's application and directing that proposed collective agreement be put to ratification vote - Union's application for reconsideration dismissed - Employees ratifying collective agreement, but Board declining to accept ratification vote as expression of employee wishes on termination application - Board directing parties to file submissions regarding status of first contract application and termination application  NATIVE CHILD AND FAMILY SERVICES OF TORONTO; RE CUPE AND ITS LOCAL 3875 .....	(Nov./Dec.)	1032
Representation Vote - First Contract Arbitration - Practice and Procedure - Termination - Employees submitting termination application while first contract application pending before Board - First contract application scheduled for hearing commencing two weeks hence - Decision as to whether or not to order representation vote and, if so, when, to be determined by panel hearing first contract application  INGERSOLL PLASTICS INC.; RE DAVID PENTLAND; RE LIUNA, LOCAL 1059 AFFILIATED WITH A.F. OF L. - C.I.O. - C.L.C. O.F.L.....	(Mar./Apr.)	233
Representation Vote - First Contract Arbitration - Practice and Procedure - Termination - Parties agreeing to adjourn first contract application sine die before any hearing - Five months later, union asking for application to be listed for hearing - Employees filing termination application one month after union's request and three weeks before first contract application scheduled to be heard - Board not ordering representation vote and deferring consideration of termination application until first contract application decided  INGERSOLL PLASTICS INC.; RE DAVID PENTLAND; RE LIUNA, LOCAL 1059 AFFILIATED WITH A.F. OF L. - C.I.O. - C.L.C., O.F.L.....	(May/June)	463
Representation Vote - Sale of a Business - Remedies - Board earlier finding merger of two hospitals to be sale of a business - Board subsequently finding intermingling and determining that combined service/office/clerical unit and paramedical units appropriate - Board directing taking of representation votes and determining that all incumbent unions should be listed on ballot and that, because vast majority of employees in bargaining units unionized, there ought not to be non-union option on ballot  PERTH AND SMITH FALLS DISTRICT HOSPITAL; RE OPSEU, CUPE AND ITS LOCAL 2119, ASSOCIATION OF ALLIED HEALTH PROFESSIONALS: ONTARIO, INDEPENDENT CANADIAN TRANSIT UNION AND ITS LOCAL 6; RE NON-UNION EMPLOYEES, PERTH AND SMITHS FALLS DISTRICT HOSPITAL.....	(May/June)	491

- Sale of a Business - Bargaining Rights - Bargaining Unit - CUPE representing comprehensive "service bargaining unit" (including paramedical employees and registered practical nurses) at General Hospital - Steelworkers' union, Practical Nurses Federation and AAHP:O representing employees in separate bargaining units of service workers, registered practical nurses and paramedical employees at Civic Hospital- Parties agreeing that closure of Civic Hospital and transfer of its operations to General Hospital amounting to sale of a business - Parties also agreeing that Board's jurisdiction under section 69(6) triggered and that Board should determine appropriate bargaining structure under that section - Board directing that appropriate bargaining unit structure is one at place at General Hospital and that vote be held in which CUPE, Steelworkers' union, AAHP:O and Practical Nurses Federation be entitled to have their names on the ballot
- PEMBROKE GENERAL HOSPITAL, THE USWA, THE PRACTICAL NURSES FEDERATION OF ONTARIO, THE ASSOCIATION OF ALLIED HEALTH PROFESSIONALS: ONTARIO, THE ONA, AND THE CUPE AND ITS LOCAL 1502; RE PEMBROKE CIVIC HOSPITAL ..... (Sept./Oct.) 918
- Sale of a Business - Bargaining Rights - Collective Agreement - Union making sale of a business application and alleging that "MTI" is a successor to "E" - Board ruling that collective agreement relied on by union to establish broader bargaining rights was made in contravention of the Act and, therefore, may not be relied on - Collective agreement relied on by union involving early termination of earlier collective agreement without consent of the Board or, alternatively, amendment of collective agreement extending its term of operation - Neither result permitted under the Act - Board concluding that scope of union's bargaining rights did not include location in Elora, Ontario - Application dismissed
- MINING TECHNOLOGIES INTERNATIONAL INC.; RE USWA ..... (May/June) 482
- Sale of a Business - Bargaining Rights - Conciliation - Reference - Union representing bargaining unit of building cleaners employed by landlord - Bill 40 deeming subsequent contracting out to cleaning contractor to be sale of a business - Union giving notice to bargain to landlord and applying for conciliation - Landlord objecting to appointment of conciliation officer on ground that union no longer having bargaining rights as against it - Board finding that deemed sale of a business did not terminate union's bargaining rights with landlord or wipe out its collective agreement - Board advising Minister that she has authority to make requested appointment of conciliation officer
- CADILLAC FAIRVIEW CORPORATION LIMITED, THE ("CADILLAC FAIRVIEW") AND OAKDALE CLEANERS & MAINTENANCE LIMITED ("OAKDALE"); RE LIUNA, LOCAL 1059 ("THE UNION") ..... (Mar./Apr.) 187
- Sale of a Business - Board dismissing application for successor rights resulting from closing of restaurant in Toronto hotel and subsequent opening of steakhouse in same premises
- HILTON CANADA INC. AND SIZZLING IN TORONTO INC.; RE HERE, LOCAL 75 ..... (May/June) 452
- Sale of a Business - Constitutional Law - Board holding that it is without jurisdiction to consider sale of a business application where there has been sale of part of business from federally regulated undertaking to provincially regulated undertaking - Applications dismissed
- ROGERS CANTEL PAGING INC.; RE LONDON AND DISTRICT SERVICE WORKERS UNION, LOCAL 220 ..... (Jan./Feb.) 129
- Sale of a Business - Hospital Labour Disputes Arbitration Act - Remedies - Parties agreeing that merger of hospitals constituting sale of a business, that the relevant bargaining units be merged, and that a representation vote between the incumbent unions be held to determine the new bargaining agent - Board ruling that collective agreement of winning union applies to all of the employees in the bargaining unit after a vote held under section 69(8) of the Act - Board

determining that because all the bargaining units are covered by the statutory “freeze”, the Board’s declarations under section 69(4) of the Act should be made retroactive to the date of application

WEST PARRY SOUND HEALTH CENTRE; RE CUPE, LOCAL 1473, OPSEU, LOCAL 320 AND SEU, LOCAL 478.....(July/August) 794

Sale of a Business - Lock-Out - Related Employer - Remedies - Board not accepting submission that assignment in bankruptcy or that bankruptcy court orders should cause Board not to find sale of a business - Sale of a business and single employer declarations issuing - Board finding that successor employer’s refusal to re-open plant closed by predecessor so long as employees there do not agree to concessions amounting to technical unlawful lock-out - Board declining to make cease and desist order in order to permit continuation of bargaining between the parties

VULCAN CONTAINERS LTD. AND VULCAN CONTAINERS (ONTARIO) LTD., VULCAN PACKAGING INC.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 1008.....(July/August) 765

Sale of a Business - Parties agreeing that hospital merger constituting sale of a business under the Act and that there has been intermingling of employees - Board satisfied that appropriate bargaining unit configuration for merged hospital is one that includes maintenance employees and operating engineers within the “service unit”

HUMBER/NORTHWESTERN/YORK-FINCH HOSPITAL, CUPE, LOCAL 1080 AND CUPE, LOCAL 3258; RE SEIU, LOCAL 204; RE IUOE, LOCAL 796, THE OPSEU AND ASSOCIATION OF ALLIED HEALTH PROFESSIONALS: ONTARIO.....(Sept./Oct.) 872

Sale of a Business - Remedies - Representation Vote - Board earlier finding merger of two hospitals to be sale of a business - Board subsequently finding intermingling and determining that combined service/office/clerical unit and paramedical units appropriate - Board directing taking of representation votes and determining that all incumbent unions should be listed on ballot and that, because vast majority of employees in bargaining units unionized, there ought not to be non-union option on ballot

PERTH AND SMITH FALLS DISTRICT HOSPITAL; RE OPSEU, CUPE AND ITS LOCAL 2119, ASSOCIATION OF ALLIED HEALTH PROFESSIONALS: ONTARIO, INDEPENDENT CANADIAN TRANSIT UNION AND ITS LOCAL 6; RE NON-UNION EMPLOYEES, PERTH AND SMITHS FALLS DISTRICT HOSPITAL.....(May/June) 491

School Board and Teachers Collective Negotiations Act - Strike - Applicant filing unlawful strike application in relation to province-wide action of Ontario teachers - Board explaining its jurisdiction and its process - Board also directing applicant to correct certain deficiencies in the application before it can be further processed

ONTARIO TEACHERS FEDERATION; RE VERONICA LOW .....(Nov./Dec.) 1041

Sector Determination - Construction Industry - Construction Industry Grievance - Employer and union bound to collective agreement in residential sector of construction industry - Collective agreement requiring employer to apply ICI collective agreement for work performed in ICI sector - Board rejecting argument that union estopped from grieving employer’s failure to pay employees weekly, rather than bi-weekly - Board finding work at two disputed sites within ambit of ICI collective agreement - Grievances alleging improper pay allowed

MAGINE CONTRACTORS INC. AND/OR MAGINE CONTRACTORS (1994) INC.; RE IUOE, LOCAL 793 .....(Mar./Apr.) 245

Security Guards - Certification - Evidence - Practice and Procedure - Employer objecting to certification application brought by Steelworkers’ union on ground that union admits to membership persons who are not guards - Statute requiring trade union to satisfy Board that no conflict of



interest would result - Board concluding that rational and efficient conduct of proceedings make it appropriate for employer to call its evidence first

BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE USWA; RE INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 1962

..... (Jan./Feb.)

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Security Guards - Certification - Practice and Procedure - Representation Vote - Applicant union's earlier certification application withdrawn prior to representation vote - Union filing new application for different, but overlapping bargaining unit - Employer and intervening union asserting that new application should be barred - Board ordering vote and directing that "bar" issue be dealt with at hearing after the vote, if necessary - Applicant asking Board to order employer to provide it with names and addresses of all bargaining unit employees - Applicant's request denied - Board directing employer to mail copies of Board's decision and Notice of Vote to all individuals in voting constituency

NORTH AMERICAN SECURITY SERVICES INC.; RE USWA; RE CANADIAN UNION OF PROFESSIONAL SECURITY-GUARDS .....

(July/August)

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Security Guards - Certification - Representation Vote - Union applying to represent bargaining unit of 140 security guards working at 36 locations - Applicant asking for Board order directing employer to produce labels containing names and addresses of each person on voters' list so as to allow union to mail written materials to employees before holding of representation vote - Board making requested order and directing that costs associated with mailing be borne by union

PROVINCIAL SECURITY SERVICES LTD.; RE USWA .....

(July/August)

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Settlement - Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application for judicial review brought by objecting individual dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED, ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER .....

(Mar./Apr.)

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Settlement - Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and

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B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED;  
MICHAEL BAUER RE OLRB, IBEW, LOCAL 353..... (Jan./Feb.)

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Settlement - Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Objecting individual seeking judicial review and filing three affidavits in support of application - Motions' court judge holding affidavits inadmissible and ordering them struck out

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ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER..... (Mar./Apr.)

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Stay - Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application for judicial review brought by objecting individual dismissed by Divisional Court

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ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER..... (Mar./Apr.)

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Stay - Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application to have judicial review application heard by single judge on grounds of urgency and motion to stay decision of the Board dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED;  
MICHAEL BAUER RE OLRB, IBEW, LOCAL 353..... (Jan./Feb.)

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Stay - Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Objecting individual seeking judicial review and filing three affidavits in support of application - Motions' court judge holding affidavits inadmissible and ordering them struck out

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED,  
ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER..... (Mar./Apr.)

297

Strike - Discharge - First Contract Arbitration - Unfair Labour Practice - Board's earlier direction that first contract be settled by arbitration ending strike - Union and employer disputing return to work obligations - Board making various preliminary rulings at parties' request - Board not accepting union's argument that section 43(14)(b) gives senior employees the right to be returned to any work that they are able to do, even if it is not the same work that they were performing before the strike started - Board finding that section 43(14) applies to require employer to reinstate all employees by seniority, regardless of whether or not they were working at the time the first contract direction was issued - Board rejecting union's argument that section 43(14) provides a guarantee against discharge of striking employees in the event



of a first contract direction - Board also finding no statutory basis for requiring employer to justify terminations on either just cause or cause standard per se

DOVER CORPORATION (CANADA) LIMITED, INDUSTRIAL DIVISION; RE NATIONAL AUTOMOBILE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) ..... (May/June) 396

Strike - Duty to Bargain in Good Faith - Remedies - Unfair Labour Practice - Employer's proposal made in January for new collective agreement rejected and employees striking - Union and employees purporting to accept proposal in March - Board satisfied that January proposal had been extinguished by passage of time and in context of long strike - Board finding that employer's rejection of union's repeated overtures to return to bargaining violating its duty to bargain - Board also finding that employer's April proposal for a new collective agreement was designed to invite rejection and was in breach of the Act - Application allowed - Parties directed to return to bargaining forthwith to bargain in good faith and to make every reasonable effort to reach a collective agreement

PC WORLD, CIRCUIT WORLD CORPORATION, OPERATING AS; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA), LOCAL 124 ..... (July/August) 711

Strike - School Board and Teachers Collective Negotiations Act - Applicant filing unlawful strike application in relation to province-wide action of Ontario teachers - Board explaining its jurisdiction and its process - Board also directing applicant to correct certain deficiencies in the application before it can be further processed

ONTARIO TEACHERS FEDERATION; RE VERONICA LOW ..... (Nov./Dec.) 1041

Termination - Adjournment - Practice and Procedure - Reconsideration - Board allowing contested adjournment request with direction that union pay reasonable costs of the day to the other two parties - Board finding claims of \$1750 by the applicant and \$750 by the intervenor to be reasonable and directing payment by next day of hearing - Union seeking reconsideration on basis that amounts claimed by parties unreasonable and that time frame for payment too short - Reconsideration request denied

BANCROFT IGA, BANLAKE ASSOCIATES LIMITED C.O.B. AS; RE D. VANDERMEER, C. THAIN, AND A GROUP OF EMPLOYEES; RE UFCW, LOCALS 175 AND 633 ..... (Nov./Dec.) 965

Termination - Board finding that employer permitted petitioners' activities and thereby contributed resources which were significant to facilitating termination application - Through its cooperation with and toleration of petitioners' activities, employer also communicated to employees its support for the application - Board finding that employer's contribution, made at an early or formative stage of the application, was significant and influential - Board satisfied that employer's conduct amounting to "initiation" of application within meaning of section 63(16) of the Act and dismissing application

TENAQUIP LIMITED; RE UNIONIZED EMPLOYEES OF TENAQUIP; RE TEAMSTERS LOCAL UNION 419 ..... (July/August) 742

Termination - Change in Working Conditions - First Contract Arbitration - Intimidation and Coercion - Interference in Trade Unions - Unfair Labour Practice - Board finding breach of statutory freeze in respect of failure to pay Christmas bonus, but not in respect of failure to hold annual Christmas party - Board finding employer's letter to employees coercive and designed to undermine union's bargaining authority, and that employer otherwise seeking to interfere with exercise of employees' rights by intimidation and coercion - Board finding that collective bargaining unsuccessful because of refusal of employer to recognize union's bargaining authority, because of uncompromising nature of employer's bargaining positions without justification, and because of failure to make reasonable and expeditious efforts to conclude a collective

agreement - Board directing that first agreement be settled by arbitration and that pending termination application be dismissed

FORT WILLIAM CLINIC; RE SEU LOCAL 268 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O. AND C.L.C. .... (May/June)

406

Termination - Collective Agreement - Judicial Review - Parties - Timeliness - Board dismissing application to terminate bargaining rights after finding that document executed between union and employer was "collective agreement" - Application not brought during last two months of collective agreement and, therefore, untimely - Employer applying for judicial review - Divisional Court holding that employer without status to seek review of Board's decision - Judicial review application dismissed

CANADIAN WILDLIFE FEDERATION; RE JAN BUREAU AND VICKI PAGE, ON THEIR OWN BEHALF AND ON BEHALF OF A GROUP OF EMPLOYEES OF THE CANADIAN WILDLIFE FEDERATION, USWA, LOCAL 8327, OLRB ..... (May/June)

555

Termination - First Contract Arbitration - Practice and Procedure - Board earlier deciding to hear first contract application first and to defer consideration of termination application - After several days of hearing, employer and union settling first contract application on basis of consent order directing settlement of first collective agreement by arbitration - Board dismissing termination application pursuant to section 43(23) of the Act

EAST SIDE MARIO'S, BIRSSA HOLDINGS INC. C.O.B. AS; RE LYNDIA ANN FALVO; RE UFCW, LOCALS 175/633 ..... (July/August)

574

Termination - First Contract Arbitration - Practice and Procedure - On first day of hearing into union's application for first contract arbitration, employer advising that it was prepared to sign proposed collective agreement included in union's application - Employer asking Board to dismiss union's application for first contract arbitration - Union claiming, inter alia, that proposed collective agreement included in its application was not an "offer" as such, that it had evaporated over the 5-month period from the date that it had been filed, and had been extinguished by the filing of a termination application by employees - Board deciding that it ought to determine whether "process of collective bargaining has been unsuccessful" in context of all of the evidence - Board declining to adjourn or dismiss union's application at preliminary stage

INGERSOLL PLASTICS INC.; RE LIUNA, LOCAL 1059; RE DAVID PENTLAND ..... (Nov./Dec.)

996

Termination - First Contract Arbitration - Practice and Procedure - Ratification and Strike Vote - Representation Vote - Reconsideration - Subsequent to union filing application for first contract arbitration, group of employees applying to terminate bargaining rights - Board directing representation vote and directing that ballot box be sealed - Board also directing that termination application be heard with first contract application - On first day of hearing, employer signing union's proposed collective agreement and asking that first contract application be terminated as moot - Board finding that parties had 'effected a first collective agreement' - Board adjourning union's application and directing that proposed collective agreement be put to ratification vote - Union's application for reconsideration dismissed - Employees ratifying collective agreement, but Board declining to accept ratification vote as expression of employee wishes on termination application - Board directing parties to file submissions regarding status of first contract application and termination application

NATIVE CHILD AND FAMILY SERVICES OF TORONTO; RE CUPE AND ITS LOCAL 3875 ..... (Nov./Dec.)

1032

Termination - First Contract Arbitration - Practice and Procedure - Representation Vote - Employees submitting termination application while first contract application pending before Board - First contract application scheduled for hearing commencing two weeks hence - Decision as to

whether or not to order representation vote and, if so, when, to be determined by panel hearing first contract application

INGERSOLL PLASTICS INC.; RE DAVID PENTLAND; RE LIUNA, LOCAL 1059 AFFILIATED WITH A.F. OF L. - C.I.O. - C.L.C. O.F.L. .... (Mar./Apr.) 233

Termination - First Contract Arbitration - Practice and Procedure - Representation Vote - Parties agreeing to adjourn first contract application sine die before any hearing - Five months later, union asking for application to be listed for hearing - Employees filing termination application one month after union's request and three weeks before first contract application scheduled to be heard - Board not ordering representation vote and deferring consideration of termination application until first contract application decided

INGERSOLL PLASTICS INC.; RE DAVID PENTLAND; RE LIUNA, LOCAL 1059 AFFILIATED WITH A.F. OF L. - C.I.O. - C.L.C., O.F.L. .... (May/June) 463

Termination - Practice and Procedure - Timeliness - Board inquiring into jurisdictional challenge, including timeliness objection, before directing representation vote in termination application - Applicant in termination application apparently filing application without first delivering copy to union - Application sent by registered mail on last day of "open period" and received by Board two days later - Applicant offering no good reason for Board to relieve against application of Rule 43o of Interim Rules or to treat application as filed on date that it was sent by registered mail - Application dismissed as untimely

CALL-A-CAB LIMITED; RE NORMAN THOMAS; RE RETAIL WHOLESALE CANADA CANADIAN SERVICE SECTOR, DIVISION OF THE USWA, LOCAL 1688, THE ONTARIO TAXI UNION ..... (Jan./Feb.) 5

Termination - Union asking Board to refuse to process termination application and/or give effect to result of representation vote because applicant failed to deliver copies of the Board's Interim Certification and Termination Rules, Information Bulletin No. 2 - Vote Arrangements, and a blank response form - Union's request dismissed - In view of results of representation vote, application granted

DIVERSEY LEVER CANADA, A DIVISION OF U.L. CANADA INC. (EQUIPMENT DIVISION); RE PATRICK MELVILLE-LABORDE; RE BREWERY, GENERAL AND PROFESSIONAL WORKERS' UNION ..... (Nov./Dec.) 991

Timeliness - Certification - Constitutional Law - Practice and Procedure - Employer and incumbent union responding to union's certification application and asserting that application untimely - Employer also asserting that its labour relations governed by Canada Labour Code - Applicant and incumbent union directed to file submissions within two days on constitutional issue, including submissions on how Board should deal with the application given the issue

STERLING MARINE FUELS, A DIVISION OF MCASPHALT INDUSTRIES LTD.; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION LOCAL NO. 880; RE IUOE, LOCAL 793 ..... (Mar./Apr.) 280

Timeliness - Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on



ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application for judicial review brought by objecting individual dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED,  
ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER.....(Mar./Apr.)

298

Timeliness - Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application to have judicial review application heard by single judge on grounds of urgency and motion to stay decision of the Board dismissed by Divisional Court

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED;  
MICHAEL BAUER RE OLRB, IBEW, LOCAL 353.....(Jan./Feb.)

169

Timeliness - Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Objecting individual seeking judicial review and filing three affidavits in support of application - Motions' court judge holding affidavits inadmissible and ordering them struck out

B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED,  
ONTARIO LABOUR RELATIONS BOARD, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 353, AND; RE MICHAEL BAUER.....(Mar./Apr.)

297

Timeliness - Certification - Hospital Labour Disputes Arbitration Act - Canadian Health Care Workers seeking to displace London & District Service Workers Union, Local 220 as bargaining agent

for certain employees - Most recent collective agreement between employer and incumbent union expired in 1992 - Board of Arbitration issuing award covering January 1, 1993 to December 31, 1994 period in January 1997 - Award dated November 1996 - Award remitting lay-off issue to parties for further negotiation and Board of Arbitration remaining seized - Whether certification application timely under provisions of HLDAA - Board finding that award not deciding matters in dispute and that 90 day extension under subsection 10(12) of HLDAA not yet triggered - Certification application dismissed as premature and untimely

CORPORATION OF THE CITY OF ST. THOMAS, THE; RE CANADIAN HEALTH CARE WORKERS; RE LONDON & DISTRICT SERVICE WORKERS' UNION, LOCAL 220

..... (May/June)

373

Timeliness - Certification - Hospital Labour Disputes Arbitration Act - Incumbent union and employer subject to provisions of Hospital Labour Disputes Arbitration Act - Raiding union filing certification application almost two years after expiry of most recent collective agreement, 19 months after appointment of conciliation officer and 17 months after Minister of Labour advising employer and incumbent union that conciliation officer had reported that the parties had been unable to effect collective agreement - Application dismissed as untimely

TRINITY VILLAGE CARE CENTER; RE CANADIAN HEALTH CARE WORKERS (C.H.C.W.); RE LONDON & DISTRICT SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C. .... (Mar./Apr.)

296

Timeliness - Collective Agreement - Judicial Review - Parties - Termination - Board dismissing application to terminate bargaining rights after finding that document executed between union and employer was "collective agreement" - Application not brought during last two months of collective agreement and, therefore, untimely - Employer applying for judicial review - Divisional Court holding that employer without status to seek review of Board's decision - Judicial review application dismissed

CANADIAN WILDLIFE FEDERATION; RE JAN BUREAU AND VICKI PAGE, ON THEIR OWN BEHALF AND ON BEHALF OF A GROUP OF EMPLOYEES OF THE CANADIAN WILDLIFE FEDERATION, USWA, LOCAL 8327, OLRB ..... (May/June)

555

Timeliness - Construction Industry - Construction Industry Grievance - Board declining to extend time for grieving under section 48(16) of the Act - Board concluding that union's failure to pursue its strict legal rights because of employer's financial position does not establish "reasonable grounds" for extending time limits contained in the collective agreement - Grievances dismissed

STANDARD UNDERGROUND HIGH VOLTAGE LTD.; RE IBEW, LOCAL 353

..... (Sept./Oct.)

936

Timeliness - Construction Industry - Jurisdictional Dispute - Practice and Procedure - Carpenters' union asking Board to dismiss jurisdictional dispute complaint brought by Labourers' union on account of delay - Board not accepting applicant's desire to compile best case or lack of counsel resources to assist in that respect as sufficient reasons for 7 month delay - Application dismissed

WALTER AND SCI CONSTRUCTION (CANADA) LTD. AND CJA, LOCAL 446; RE LIUNA, LOCAL 1036 ..... (Sept./Oct.)

961

Timeliness - Practice and Procedure - Termination - Board inquiring into jurisdictional challenge, including timeliness objection, before directing representation vote in termination application - Applicant in termination application apparently filing application without first delivering copy to union - Application sent by registered mail on last day of "open period" and received by Board two days later - Applicant offering no good reason for Board to relieve against application

of Rule 43o of Interim Rules or to treat application as filed on date that it was sent by registered mail - Application dismissed as untimely

CALL-A-CAB LIMITED; RE NORMAN THOMAS; RE RETAIL WHOLESALE CANADA  
CANADIAN SERVICE SECTOR, DIVISION OF THE USWA, LOCAL 1688, THE ON-  
TARIO TAXI UNION ..... (Jan./Feb.)

5

Trade Union - Certification - Construction Industry - Judicial Review - Reconsideration - Power Workers' Union (PWU) seeking to displace International Brotherhood of Electrical Workers (IBEW) in several bargaining units - Board concluding that PWU not a construction "trade union" within meaning of section 126 of the Act and therefore not entitled to bring its certification applications - Applications for certification and request for reconsideration dismissed - PWU applying for judicial review - Motions Court judging striking out portion of affidavit and factum filed by PWU

ONTARIO HYDRO, G.T. SURDYKOWSKI, OLRB, IBEW, LOCAL 1788, IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO, IBEW, LOCAL 105, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, THE IBEW CONSTRUCTION COUNCIL OF ONTARIO, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1687, ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION AND ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO; RE PWU, CUPE, LOCAL 1000.....(Nov./Dec.)

1066

Trade Union - Certification - Construction Industry - Reconsideration - Power Workers' Union (PWU) seeking to displace International Brotherhood of Electrical Workers (IBEW) in several bargaining units - Board concluding that PWU not a construction "trade union" within meaning of section 126 of the Act and therefore not entitled to bring its certification applications - Applications for certification and request for reconsideration dismissed

ONTARIO HYDRO; THE POWER WORKERS' UNION, CUPE LOCAL 1000 ("PWU"); RE THE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION (EPSCA), THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO (ECAO), INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1788 (IBEW 1788), THE IBEW CONSTRUCTION COUNCIL OF ONTARIO (IBEW CCO), INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1687 (IBEW 1687).... (Jan./Feb.)

82

Trade Union - Certification - Trade Union Status - Board expressing concern regarding apparent failure to elect officers and admit members in accordance with rules set out in newly adopted constitution, but finding applicant to be a "trade union" within meaning of the Act

(RAMADA INN WINDSOR, C.O.B AS), COMMONWEALTH HOSPITALITY LTD.; RE THE PEOPLE'S UNION; RE TEAMSTERS LOCAL 847, LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS.....(Mar./Apr.)

251

Trade Union - Certification - Trade Union Status - Board noting certain technical deficiencies in proving applicant's status exclusively on basis of grant of charter from parent union, but Board also relying on evidence regarding nature and scope of applicant's on-going activities to establish status - On going activities including collective bargaining in respect of 30 bargaining units representing 2000 members - Board finding applicant IWA-Canada, Local 1-1000 to be trade union within meaning of the Act

HAWKESBURY KNITTING MILLS; RE IWA - CANADA, LOCAL 1-100.....(Sept./Oct.)

862

Trade Union Status - Certification - Employee - Evidence - Membership Evidence - Reconsideration - Representation Vote - Board finding that locals of UNITE and UNITE's Ontario District Council are inter-related organizations each of which has status of a trade union within the meaning of the Act - Employer and objecting employees asking Board to dismiss application on grounds that application filed by District Council was accompanied by evidence of membership in International union - Board seeing no reason to overturn evidence of earlier finding



regarding 40 percent “appearance” of support in applicant - Board allowing union to challenge employment status of two individuals for first time after the vote where their status was already in issue for other reasons and their ballots were already segregated

BLACK PHOTO CORPORATION; UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES ONTARIO DISTRICT COUNCIL; RE GROUP OF EMPLOYEES

..... (May/June) 347

Trade Union Status - Certification - Trade Union - Board expressing concern regarding apparent failure to elect officers and admit members in accordance with rules set out in newly adopted constitution, but finding applicant to be a “trade union” within meaning of the Act

(RAMADA INN WINDSOR, C.O.B AS), COMMONWEALTH HOSPITALITY LTD.; RE THE PEOPLE’S UNION; RE TEAMSTERS LOCAL 847, LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS..... (Mar./Apr.) 251

Trade Union Status - Certification - Trade Union - Board noting certain technical deficiencies in proving applicant’s status exclusively on basis of grant of charter from parent union, but Board also relying on evidence regarding nature and scope of applicant’s on-going activities to establish status - On going activities including collective bargaining in respect of 30 bargaining units representing 2000 members - Board finding applicant IWA-Canada, Local 1-1000 to be trade union within meaning of the Act

HAWKESBURY KNITTING MILLS; RE IWA - CANADA, LOCAL 1-100..... (Sept./Oct.) 862

Trusteeship - Board consenting to six-month continuation of trusteeship by CUPE over CUPE Local 43

METRO TORONTO CIVIC EMPLOYEES’ UNION, LOCAL 43; RE CUPE; RE DARIUS MASALAS, HARRO BAUER, WOODROW A. HIGGINS, DANNY SCHEIBLI, BRIAN MORGAN, THOMAS LENATHEN AND EARL GORDON..... (May/June) 478

Trusteeship - Construction Industry - Carpenters’ union local complaining under Bill 80 provisions of the Act that trusteeship imposed on it by international union without “just cause” - Board finding that Carpenters’ local not a construction trade union within the meaning of section 126 of the Act to which provisions of Bill 80 might apply

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1072 AND JOE ALMEIDA; RE CJA ..... (Sept./Oct.) 942

Trusteeship - Construction Industry - Intimidation and Coercion - Unfair Labour Practice - Board finding that IBEW Local 1788 was engaged in reasonable dissent and declaring that IBEW had no just cause to impose trusteeship on its local - Board dismissing supervision of the local - Local’s application under Bill 80 provisions of the Act allowed - IBEW’s application to extend trusteeship dismissed

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND KEN WOODS; RE IBEW, LOCAL UNION 1788 ..... (Nov./Dec.) 1022

Unfair Labour Practice - Adjournment - Collective Agreement - Duty of Fair Representation - Practice and Procedure - Ratification and Strike Vote - Union and employer making joint request for early termination of collective agreement - Union and employer seeking to replace collective agreement with new 6-year agreement - Union and employer negotiating (and employees ratifying) new 6 year agreement after employer announcing plant closure - New agreement containing various “concessions”, but also including increased severance package and provision allowing employees who had already accepted severance packages to revoke their acceptance and return to employment - Objecting employees alleging that union violated its duty of fair representation and asking Board to deny joint request - Board denying adjournment requested by objecting employees’ counsel who had been retained on the day before the hearing - Board finding that union made good faith efforts to balance competing interests of its members -

Board dismissing challenge to ratification vote based on union allowing departed (or departing) employees to vote on new collective agreement - Unfair labour practice complaints dismissed - Board consenting to early termination of collective agreement

WILLIAM NEILSON LTD. AND TEAMSTERS LOCAL 647; RE SEAN DONOVAN ET AL .....(Nov./Dec.)

1056

Unfair Labour Practice - Bargaining Rights - Bargaining Unit - Duty to Bargain in Good Faith - Board finding Health Unit employer in violation of its duty to bargain in good faith by bargaining to impasse the issue of proposed changes to the bargaining unit description, and by refusing to remove its proposal from the negotiating table when the parties were in a strike/lock-out position - Board directing employer to cease insisting on its bargaining unit proposal and to meet with union with 2 weeks to bargain in good faith and make every reasonable effort to effect a collective agreement

HALIBURTON, KAWARTHA, PINE RIDGE DISTRICT HEALTH UNIT; RE CUPE LOCAL 1602 .....(Sept./Oct.)

857

Unfair Labour Practice - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Discharge for Union Activity - Intimidation and Coercion - Remedies - Board finding lay-off of union supporter improperly motivated and unlawful - Board finding that certain statements of employer reasonably perceived as threats to employment - Board issuing cease and desist order and directing that damages be paid to discharged employee - Board also certifying union under section 11 of the Act

MARSIL MECHANICAL INC. ("MARSIL"); RE ONTARIO PIPE TRADES COUNCIL OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA ("O.P.C.") AND THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA ("U.A.") .....(Sept./Oct.)

900

Unfair Labour Practice - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Discharge for Union Activity - Remedies - Board finding that employer violated the Act when it discharged union's two key supporters - Board finding membership support adequate for collective bargaining where union had signed up 2 employees out of 10 in bargaining unit and where union applying for ICI bargaining rights - Board finding that other requirements under section 11(1) also satisfied - Certificates issuing - Board also directing reinstatement and compensation for infringement of statutory rights, even if offer of reinstatement declined and even if the discharged employees were otherwise employed through entire period - Board also declaring that union entitled to conduct two meetings with employees during working hours, in the absence of the employer

PIETRO ELECTRIC LIMITED; RE IBEW CONSTRUCTION COUNCIL OF ONTARIO, AND IBEW LOCAL 773 .....(May/June)

527

Unfair Labour Practice - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Interference in Trade Unions - Intimidation and Coercion - Remedies - Employer threatening to shut plant and move to United States if union certified - Board certifying union under section 11 of the Act - Board directing reinstatement of inside union organizer who resigned position because he thought that he would be dismissed following union's loss in representation vote

TILL-FAB LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS' UNION OF CANADA (CAW) .....(Nov./Dec.)

1047

Unfair Labour Practice - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Interference in Trade Unions - Judicial Review - Board finding that employer violated the Act in promoting an employee association in the face of the union

organizing campaign and in indefinitely suspending the lead inside union organizer - Board certifying union under section 11(1) of the Act - Application for judicial review dismissed by Divisional Court

BURLINGTON GOLF & COUNTRY CLUB LIMITED; RE CANADIAN UNION OF OPERATING ENGINEERS AND GENERAL WORKERS AND THE OLRB.....(Mar./Apr.) 299

Unfair Labour Practice - Certification - Change in Working Conditions - Representation Vote - Union alleging that video tape and letter sent by employer to each employee's home on eve of representation vote contained material misrepresentations regarding statutory freeze and threats to employment - Union asking that second vote be ordered - Board rejecting union's allegations - Application for certification and unfair labour practice complaints dismissed

KRAFT CANADA INC.; RE UFCW, LOCAL 175.....(Mar./Apr.) 239

Unfair Labour Practice - Certification - Charges - Representation Vote - Canadian Health Care Workers (CHCW) applying to displace Service Workers' Union Local 220 as bargaining agent for certain hospital workers - Board finding that allegations made by CHCW concerning conduct of Local 220 and employer could not, even if true, support finding of breach of the Act or undermine results of representation vote - Applications dismissed

GRAND RIVER HOSPITAL CORPORATION; RE CANADIAN HEALTH CARE WORKERS (C.H.C.W.); RE LONDON & DISTRICT SERVICE WORKERS' UNION, LOCAL 220 .....(Sept./Oct.) 855

Unfair Labour Practice - Change in Working Conditions - Discharge - Discharge for Union Activity - Interest Arbitration - Practice and Procedure - Board earlier directing that first collective agreement between parties be settled by arbitration - Union alleging that employer unlawfully discharged 4 employees shortly after Board's first contract direction - Employer asserting that union had elected to have matter of discharges dealt with by interest arbitration board seized of the contract dispute and that unfair labour practice application should accordingly be dismissed - Board rejecting employer's request to dismiss (without prejudice to employer's right to argue how Board ought to proceed in view of whatever the award of the interest board may be) - Board, however, deferring further consideration of application to next hearing dates scheduled 7 weeks hence (by which time results of interest arbitration may be known to the parties)

DOVER CORPORATION (CANADA) LIMITED, INDUSTRIAL DIVISION; RE NATIONAL AUTOMOBILE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) .....(Nov./Dec.) 994

Unfair Labour Practice - Change in Working Conditions - First Contract Arbitration - Intimidation and Coercion - Interference in Trade Unions - Termination - Board finding breach of statutory freeze in respect of failure to pay Christmas bonus, but not in respect of failure to hold annual Christmas party - Board finding employer's letter to employees coercive and designed to undermine union's bargaining authority, and that employer otherwise seeking to interfere with exercise of employees' rights by intimidation and coercion - Board finding that collective bargaining unsuccessful because of refusal of employer to recognize union's bargaining authority, because of uncompromising nature of employer's bargaining positions without justification, and because of failure to make reasonable and expeditious efforts to conclude a collective agreement - Board directing that first agreement be settled by arbitration and that pending termination application be dismissed

FORT WILLIAM CLINIC; RE SEU LOCAL 268 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O. AND C.L.C. ....(May/June) 406

Unfair Labour Practice - Collective Agreement - Interest Arbitration - Parties - Practice and Procedure - Union alleging that employer violating the Act because of its refusal to execute or implement first collective agreement as directed by board of arbitration - Employer asserting



that board of arbitration exceeded its jurisdiction and that its award is a nullity - Employer asserting same position in pending judicial review application of arbitration award - Board determining that bargaining unit employees not entitled to notice or to participate in Board proceeding - Board doubting its jurisdiction to sit in review of board of arbitration process - Board, in any event, exercising its discretion not to inquire into complaint because fundamental issue between the parties best dealt with by the Court in judicial review application - Application dismissed

GREENBERG STORES LIMITED; RE USWA ..... (Jan./Feb.)

61

Unfair Labour Practice - Construction Industry - Damages - Discharge - Remedies - Employer acknowledging violation of the Act but parties disputing appropriate remedy - Board rejecting submission that reinstatement not appropriate - Employer directed to offer grievor position if its employee complement expands to more than 20 employees in 1997 - Board making no order regarding 1998 - Board finding delay in filing complaint not unreasonable and requiring no reduction in damages to which grievor otherwise entitled - Board also finding grievor's attempts at mitigation reasonable - Board deducting workers' compensation benefits received during 5 month period from damages to which grievor otherwise entitled - Board finding that but for employer's wrongful conduct, grievor would have earned sufficient credits to entitle him to employment insurance benefits during two periods of lay-off and Board ordering damages in that respect as well

TORBRIDGE CONSTRUCTION LTD.; RE LIUNA, LOCAL 183 ..... (July/August)

751

Unfair Labour Practice - Construction Industry - Intimidation and Coercion - Trusteeship - Board finding that IBEW Local 1788 was engaged in reasonable dissent and declaring that IBEW had no just cause to impose trusteeship on its local - Board dismissing supervision of the local - Local's application under Bill 80 provisions of the Act allowed - IBEW's application to extend trusteeship dismissed

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND KEN WOODS;  
RE IBEW, LOCAL UNION 1788 ..... (Nov./Dec.)

1022

Unfair Labour Practice - Construction Industry - Natural Justice - Applicant asking vice-chair to disqualify himself on grounds of alleged reasonable apprehension of bias - Applicant relying on a series of decisions issued by vice-chair over previous four years which were decided against Applicant - Applicant's request dismissed

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS IN ITS OWN RIGHT  
ADN AS TRUSTEE AND KEN WOODS, ALLAN DIGGON, TOM MCGREEVY, ONTARIO  
HYDRO AND ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION  
("EPSCA"); RE POWER WORKERS' UNION - CUPE, LOCAL 1000 ("PWU") AND J.  
CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L. CRAUSEN, H.R. GILLIES, R.C.  
HANSEN, G. O'DONNELL, J. STARK, R. THOMS, H. TOMSETT AND R.R. YOUNG;  
RE THE IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO  
("IBEW-EPSCCO") ..... (Nov./Dec.)

1005

Unfair Labour Practice - Discharge - Discharge for Union Activity - Remedies - Board concluding that employer's decision to contract out certain maintenance work tainted by anti-union animus - Contracting out leading to termination of two maintenance workers - Board directing employer to reinstate terminated employees, to compensate them for lost income, and to post certain notices in the workplace

DA VINCI CENTRE, SOCIETA ITALIANA DI BENEVOLENZA PRINCIPE DI PIEMONTE  
C.O.B. AS THE; RE HOSPITALITY, COMMERCIAL AND SERVICE EMPLOYEES  
UNION, LOCAL 73 CHARTERED BY H.E.R.E. .... (Nov./Dec.)

970

Unfair Labour Practice - Discharge - Discharge for Union Activity - Judicial Review - Reconsideration - Board exercising its discretion not to inquire into unfair labour practice complaint where

substance of complaint and of grievances at arbitration overlapped, where allegation of anti-union motivation was before arbitration board and where arbitration board had complete jurisdiction to inquire into matter - Complaint dismissed - Request for reconsideration dismissed - Application for judicial review dismissed by Divisional Court

DEMETRIADES, JOHN; RE OLRB AND ST. JOSEPH'S HEALTH CENTRE..... (May/June) 556

Unfair Labour Practice - Discharge - Duty of Fair Representation - Applicant alleging that union violated its duty of fair representation by failing to present certain arguments and evidence with respect to systemic race discrimination at applicant's discharge grievance arbitration - Application dismissed

LANUZA, TERESITA; RE ONA; RE THE TORONTO HOSPITAL .....(July/August) 615

Unfair Labour Practice - Discharge - First Contract Arbitration - Strike - Board's earlier direction that first contract be settled by arbitration ending strike - Union and employer disputing return to work obligations - Board making various preliminary rulings at parties' request - Board not accepting union's argument that section 43(14)(b) gives senior employees the right to be returned to any work that they are able to do, even if it is not the same work that they were performing before the strike started - Board finding that section 43(14) applies to require employer to reinstate all employees by seniority, regardless of whether or not they were working at the time the first contract direction was issued - Board rejecting union's argument that section 43(14) provides a guarantee against discharge of striking employees in the event of a first contract direction - Board also finding no statutory basis for requiring employer to justify terminations on either just cause or cause standard per se

DOVER CORPORATION (CANADA) LIMITED, INDUSTRIAL DIVISION; RE NATIONAL AUTOMOBILE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) ..... (May/June) 396

Unfair Labour Practice - Duty of Fair Representation - Applicant asserting that union's failure to initiate judicial review application of arbitration decision (in circumstances where union allegedly agreed that such an application ought to be brought) violating the Act - Application dismissed

DEMETRIADES, JOHN; RE CUPE, LOCAL 1144; RE ST. JOSEPH'S HEALTH CENTRE .....(Sept./Oct.) 840

Unfair Labour Practice - Duty of Fair Representation - Judicial Review - Board declining to inquire into duty of fair representation complaint in view of passage of time from critical events, applicant's delay in raising his concerns with the union and the Board, the likelihood of success of the complaint and the utility of any remedy that might flow - Application for judicial review dismissed by Divisional Court

GOEL, BHARAT; RE OLRB AND YORK UNIVERSITY STAFF ASSOCIATION .....(Nov./Dec.) 1065

Unfair Labour Practice - Duty to Bargain in Good Faith - Interim Relief - Remedies - On eve of strike, employer unilaterally transferring seven bargaining unit positions outside of bargaining unit - Union filing unfair labour practice complaint and asking for interim order requiring employer to continue to recognize union as exclusive bargaining agent for the seven individuals holding the disputed positions - Board concluding that balance of harm weighing in favour of union - Application for interim order granted pending disposition or resolution of unfair labour practice complaint

REGIONAL MUNICIPALITY OF NIAGARA, THE; RE CUPE, LOCAL 1287..(July/August) 733

Unfair Labour Practice - Duty to Bargain in Good Faith - Interim Relief - Remedies - Union alleging that employer's failure to provide certain financial and other information violating duty to

bargain - Board making interim order under section 98 of the Act directing production of information and setting out mechanism for its collection

METRO CAB COMPANY LIMITED AND METRO CABS ASSOCIATES' COMMITTEE REPRESENTING ASSOCIATES OF METRO CAB COMPANY LIMITED; RE RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE USWA AND LOCAL 1688 THE ONTARIO TAXI UNION..... (May/June)

474

Unfair Labour Practice - Duty to Bargain in Good Faith - Remedies - Strike - Employer's proposal made in January for new collective agreement rejected and employees striking - Union and employees purporting to accept proposal in March - Board satisfied that January proposal had been extinguished by passage of time and in context of long strike - Board finding that employer's rejection of union's repeated overtures to return to bargaining violating its duty to bargain - Board also finding that employer's April proposal for a new collective agreement was designed to invite rejection and was in breach of the Act - Application allowed - Parties directed to return to bargaining forthwith to bargain in good faith and to make every reasonable effort to reach a collective agreement

PC WORLD, CIRCUIT WORLD CORPORATION, OPERATING AS; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA), LOCAL 124 .....(July/August)

711

Unfair Labour Practice - First Contract Arbitration - Natural Justice - Reconsideration - Board earlier directing settlement of first collective agreement by arbitration - Employer seeking reconsideration of decision on grounds of reasonable apprehension of bias - Employer submitting that apprehension of bias arising because on or about the date of the Board's earlier decision, vice-chair of the panel entered into a retainer agreement with the Canadian Air Line Pilots Association (CALPA) - Employer also relying on fact that vice-chair had discussions with CALPA regarding the retainer prior to date of Board's decision - Board not agreeing that circumstances giving rise to reasonable apprehension of bias - Reconsideration request denied

DOVER CORPORATION (CANADA) LIMITED INDUSTRIAL DIVISION; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) .....(July/August)

568

Unfair Labour Practice - Following making of first collective agreement between movie theatre chain and union representing 'front of the house' employees, employer ending certain practices or benefits including free movie passes and free access to pre-screening of movies prior to exhibition for employees covered by the agreement - Board concluding that employer's conduct improperly motivated and illegal - Complaint allowed - Cease and desist order issuing

FAMOUS PLAYERS INC.; RE IATSE ..... (Jan./Feb.)

50

Unfair Labour Practice - Interference in Trade Unions - Board noting that union's pleadings, even if accepted, not clearly pointing to any prohibited conduct on part of employer - Board also observing that all of the circumstances making up the union's complaint already part of the record in related arbitration proceeding - Board declining to inquire into unfair labour practice complaint where problem identified by union not a labour relations problem and where no labour relations purpose would be served by generating further layer of litigation between the parties - Application dismissed

SIEMENS ELECTRIC LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 35..... (Mar./Apr.)

279

Unfair Labour Practice - Interference in Trade Unions - Union asserting that employer deducted dues totalling \$35,000 from employees which were never remitted to union - Employer placed in receivership and later declaring bankruptcy - Union filing unfair labour practice complaint against various receivers and secured creditors of employer and claiming that they have



interfered in administration of union by failing to remit dues already deducted from employees - Board not satisfied that respondents fairly characterized as "persons acting on behalf of employer" - Board also concluding that unremitted dues amounting to "claim provable in bankruptcy" within meaning of Bankruptcy and Insolvency Act (BIA), and that union's application barred by section 69.3 of BIA - Union's unfair labour practice complaint dismissed

CANADIAN IMPERIAL BANK OF COMMERCE, NORTH AMERICAN TRUST COMPANY, ALLSTATE INSURANCE COMPANY OF CANADA, CHARLES R. MCDONALD, WILLIAM PASCOE, CLIFFORD N. SUTTS, ARIC J. RUSK AND BDO DUNWOODY LIMITED, DAVIS MARTINDALE AND COMPANY INC., COOPERS & LYBRAND LIMITED; RE CAW-CANADA..... (May/June)

371

Unfair Labour Practice - Remedies - Applicant employee alleging unlawful reprisal from union as result of earlier complaint alleging breach of duty of fair representation - Applicant seeking order removing union steward from workplace and from any workplace where he might be assigned work and also seeking declaratory relief - Board noting that it was unlikely to grant remedies sought, particularly where applicant had never asked union to sanction conduct of steward and where conduct complained of had ceased almost one year earlier - Board exercising its discretion not to inquire further into complaint - Application dismissed

JEBODH, DEV; RE OPSEU; RE THE CROWN IN THE RIGHT OF ONTARIO, AS REPRESENTED BY MANAGEMENT BOARD OF CABINET..... (Mar./Apr.)

236

Unfair Labour Practice - Union alleging that employer committing various unfair labour practices - Employer asserting that employees employed in horticulture and, therefore, that Labour Relations Act not applying - Board finding employees employed in silviculture and therefore covered by the Act

HILL'S GREENHOUSES LTD.; RE SUSAN WOLFRAME, CAROLE FAWCETT AND TITUS KEMP ..... (May/June)

442

Unfair Labour Practice - Union alleging that six individuals previously employed at shut-down Peterborough facility not offered positions at new facility in Cobourg because of their union affiliation - Board not satisfied that employer's decision free of anti-union animus - Application alleging violation of section 72(a) of the Act allowed

COCA-COLA BOTTLING LTD.; RE SOFT DRINK WORKERS JOINT LOCAL EXECUTIVE COUNCIL ..... (Jan./Feb.)

39

Unfair Labour Practices - First Contract Arbitration - Judicial Review - Natural Justice - Reconsideration - Board earlier directing settlement of first collective agreement by arbitration - Employer seeking reconsideration of decision on grounds of reasonable apprehension of bias - Employer submitting that apprehension of bias arising because on or about the date of the Board's earlier decision, vice-chair of the panel entered into a retainer agreement with the Canadian Air Line Pilots Association (CALPA) - Employer also relying on fact that vice-chair had discussions with CALPA regarding the retainer prior to date of Board's decision - Board not agreeing that circumstances giving rise to reasonable apprehension of bias - Reconsideration request denied - Application for judicial review dismissed by Divisional Court

DOVER CORPORATION (CANADA) LIMITED INDUSTRIAL DIVISION; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA), BRIAN KELLER, KAREN BRENNAN AND LARRY BERTUZZI, AND THE OLRB ..... (Nov./Dec.)

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